

# Domestic Torts In Connecticut

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A Guide to Resources in the Law Library

Compiled

by

***Lawrence Cheeseman***

Connecticut Judicial Branch  
Law Libraries

**2004  
Edition**

“All light is valuable on a darken path.”  
DeQuincy

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These guides are provided with the understanding that they represent only a starting point to legal research.

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# Chapter 1

## Alienation of Affection Suits in Connecticut

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“This is a tort based upon willful and malicious interference with the marriage relation by a third party, without justification or excuse. The title of the action is **alienation of affections**. By definition, it includes and embraces mental anguish, loss of social position, disgrace, humiliation and embarrassment, as well as actual pecuniary loss due to destruction or disruption of marriage relationship and the loss of financial support, if any.” (emphasis added) *Donnell v. Donnell*, 415 S.W.2d 127, 132 (Tenn. 1967).

The Supreme Court decision in *Piccininni v. Hajus*, 180 Conn. 369, 429 A.2d 886 (1980), outlines the right of a donor to obtain reimbursement for expenditures occurred in contemplation of marriage. The case holds that the so-called Heart Balm statute, General Statutes § 52-572b, regarding breach of a promise to marry, only bars claims of humiliation, mental anguish and the like, but does not affect "rights and duties determinable by common law principles." *Id.*, 372. *Greene v. Cox*, No. CV 95 0147177 (Conn. Super. Ct., Jud. District, Stamford-Norwalk at Stamford, Dec. 19, 1995) 1995 WL 780893, 1995 WL 780893.

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# Section 1.1

## Spousal Alienation of Affection

*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to alienation of affection suits in Connecticut
- DEFINITION:** **Heart Balm Act.** “The distaste for alienation of affection and breach of promise suits which has inspired in recent years the enactment of laws abolishing such ‘heart balm’ litigation has stemmed largely from publicized abuses of these common-law remedies as instruments of fraud and extortion.” Tarquinio v. Pelletier, 28 Conn. Sup. 487, 488, 266 A.2d 410 (1970).
- STATUTES:**
- CONN. GEN. STAT. (2003)  
§ 52-572b. Alienation of affection and breach of promise actions abolished
- HISTORY:**
- 1967 CONN. ACTS 275 (Reg. Sess.)  
“No action shall be brought upon any cause arising after October 1, 1967 from alienation of affection or from breach of a promise to marry.”
  - 1982 CONN. ACTS 160 §238 (Reg. Sess.)
- COURT CASES**  
(Connecticut):
- Tarquinio v. Pelletier, 28 Conn. Sup. 487, 266 A.2d 410 (1970).
- DIGESTS:**
- WEST KEY NUMBERS: *Husband and Wife* 322 et seq.
- ENCYCLOPEDIAS:**
- 41 C.J.S. *Husband and Wife* §§247, 248 (1971).
  - 41 AM. JUR. 2D *Husband and Wife* §§270-277 (1995).
  - Annotation, *Elements Of Causation In Alienation Of Affections Action*, 19 ALR2d 471 (1951).
  - Annotation, *Punitive Or Exemplary Damages In Action By Spouse For Alienation Of Affections Or Criminal Conversation*, 31 ALR2d 713 (1953).
  - Annotation, *What Statute Of Limitations Governs An Action For Alienation Of Affections Or Criminal Conversation*, 46 ALR2d 1086 (1956).
- TEXTS & TREATISES:**
- DOUGLASS S. WRIGHT ET AL., CONNECTICUT LAW OF TORTS 2D (1991).  
§ 79b. Actions by husband or wife  
§ 171g. Alienation of affection and loss of consortium
  - LEONARD KARP AND CHERYL L. KARP, DOMESTIC TORTS: FAMILY

VIOLENCE, CONFLICT AND SEXUAL ABUSE (1989).

§ 7.02 “Spousal alienation of affection”

- JEROME H. NATES ET AL., DAMAGES IN TORT ACTIONS (1998).  
Chapter 11. Third party interference with familial relationships  
§ 11.05[3] [a]. Alienation of affections. Actions by spouse
- 2 FOWLER V. HARPER ET AL., THE LAW OF TORTS (2d ed. 1986).  
§ 8.3. Alienation of affections of spouse and criminal conversation

**LAW REVIEWS:**

- Marilyn Paula Seichter, *Alienation Of Affection: Gone But Not Forgotten*, 10 FAMILY ADVOCATE 23 (1987). Special issue: on Fault.

**COMPILER:**

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. EMAIL: lawrence.cheeseman@jud.state.ct.us

**Table 1 Spousal Alienation of Affections in Other States**

<b>Spousal Alienation of Affection Actions Abolished</b>	
Massachusetts	Mass. Gen. Laws Ann. Chapter 207
New York	Civil Rights Law § 80-9
Rhode Island	R.I. Gen. Laws § 9-1-42
<b>Lists of States Abolishing</b>	
Statutory	JEROME H. NATES ET AL., DAMAGES IN TORT ACTIONS (1998) § 11.05 [3][a][ii]. <i>See footnote 59</i>
Case Law	JEROME H. NATES ET AL., DAMAGES IN TORT ACTIONS (1998) § 11.05 [3][a][ii]. <i>See footnote 62</i>

## Section 1.2

# Criminal Conversation

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- SCOPE:** Bibliographic resources relating to the tort of criminal conversation in Connecticut
- DEFINITION:** **Criminal Conversation:** “means adulterous relations between the defendant and the spouse of the plaintiff . . . . To sustain the action, plaintiff must establish (1) the marriage between the spouses, and (2) sexual intercourse between the defendant and the spouse during coverture.” *Russo v. Sutton*, 422 S.E.2d 750, 752 (S.C. 1992).
- STATUTES:**
- CONN. GEN. STAT. (2003)  
§ 52-572f Criminal conversation action abolished
- HISTORY**
- 1971 CONN. ACTS 177 (Reg. Sess.)  
“No action shall be brought upon any cause arising after October, 1, 1971, from criminal conversation.” Approved May 17, 1971.
  - 1992 CONN. ACTS 160 §239 (Reg. Sess.)
- COURT CASES**  
(Connecticut):
- *Hunt v. Beaudoin*, No. CV94-0544174 (Conn. Super. Ct., Jud. District of Hartford-New Britain at Hartford, Sep. 3, 1997), 1997 WL 568037. “Count one directed against Samuels has been characterized by Plaintiff as interference with marital contract but is best described as sounding in the common law actions of alienation of affections and criminal conversation, both of which have been abolished in Connecticut by statute. In accordance with *Baldwin v. Harmony Builders, Inc.*, 31 Conn. App. 242 (1993), nominal damage of One Dollar (\$1) is found against Keith Samuels.”
  - *Dufault v. Mastrocola*, No. CV 94 0543343 (Conn. Super. Ct., Jud. District of Hartford-New Britain at Hartford, Mar. 1, 1996), 1996 WL 166471. “Based on the language noted above, the plaintiff is alleging common law causes of action for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of fiduciary duty, breach of a contractual obligation to a third-party beneficiary, and breach of an implied contract. Accordingly, the court finds that Mastrocola's motion to strike Counts One through Four of the plaintiff's complaint and Schiffer's motion to strike Counts Five through Seven of the plaintiff's complaint, on the ground that the torts of alienation of affections and criminal conversation have been abolished in Connecticut, are denied.”
  - *Tarquinio v. Pelletier*, 28 Conn. Supp. 487, 266 A.2d 410 (1970).
- DIGESTS:**
- WEST KEY NUMBERS: *Husband and Wife* 340 et seq.
- ENCYCLOPEDIAS:**
- 41 C.J.S. *Husband and Wife* §249 (1991).
  - 41 AM. JUR. 2D *Husband and Wife* §§278, 279 (1995).

- Marjorie A. Shields, Annotation, *Action For Intentional Infliction Of Emotional Distress Against Paramours*, 99 ALR5th 445(2002).
- Annotation, *Punitive Or Exemplary Damages In Action By Spouse For Alienation Of Affections Or Criminal Conversation.*” 31 ALR2d 713.
- Annoation, *What Statute Of Limitations Governs An Action For Alienation Of Affections Or Criminal Conversation*, 46 ALR2d 1086.

**TEXTS &  
TREATISES:**

- DOUGLASS S. WRIGHT ET AL., CONNECTICUT LAW OF TORTS 2D (1991).  
§ 79b Actions by husband or wife
- LEONARD KARP AND CHERYL L. KARP, DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE (1989).  
§ 7.03 “Criminal conversation”
- JEROME H. NATES ET AL., DAMAGES IN TORT ACTIONS (1998).  
§ 11.05[2]. Criminal conversation  
[a]. In general  
[b]. Proof required  
[c]. Abolition of action

**COMPILER:**

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 006457. (860) 343-6560. EMAIL: lawrence.cheeseman@jud.state.ct.us

**Table 2 Criminal Conversation in Other States**

<b>Criminal Conversation Actions Abolished</b>	
Massachusetts	Mass. Gen. Laws Ann. Chapter 207 § 47B
New York	N.Y. Civil Rights Law § 80-9
Rhode Island	R.I. Gen. Laws § 9-1-42
<b>Lists of States Abolishing</b>	
	JEROME H. NATES ET AL., DAMAGES IN TORT ACTIONS (1998) § 11.05 [2][c] <i>See footnote 25</i>
Statutory	17 LOUIS R. FRUMER AND MELVIN I. FRIEDMAN, ED., PERSONAL INJURY: ACTIONS, DEFENSES AND DAMAGES (2003) § 1.02[1][e][ii][A]. <i>See footnote 10</i>
Case Law	17 LOUIS R. FRUMER AND MELVIN I. FRIEDMAN, ED., PERSONAL INJURY: ACTIONS, DEFENSES AND DAMAGES (2003) § 1.02[1][e][ii][A]. <i>See footnote 10</i>

## Section 1.3

# Alienation of

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# Affection of Parent or Child

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- SCOPE:** Bibliographic resources relating to tort actions for alienation of affections of a child or parent
- COURT CASES:**
- Bouchard v. Sundberg, 80 Conn. App. 180, 194 (2003). “Therefore, because the legislature has abolished claims for alienation of affections and our Supreme Court in *Zamstein* [*Zamstein v. Marvasti*, 240 Conn. 549, 565, 692 A.2d 781 (1997)] precluded a parent from bringing an alienation claim on the basis of a loss of a child's affections, as a matter of law, we cannot recognize the claim.”
  - Mendillo v. Board of Education of Town of East Haddam, 246 Conn. 456, 481, 717 A.2d 1177 (1998). “More specifically related to the present case, we have held that a minor child has no cause of action for alienation of his parent’s affections by a third party; *Taylor v. Keefe* . . . .”
  - Taylor v. Keefe, 134 Conn. 156, 157, 56 A.2d 768 (1947). “The sole question for determination is whether a minor child can maintain an action for alienation of affections against one who has alienated from him the affections of his mother.”
- DIGESTS:**
- West Key Number: Parent and Child # 7(1), Torts #9
  - Dowling’s Digest: Parent and Child §1
- ENCYCLOPEDIAS:**
- 67A C.J.S. *Parent and Child* §130-136 (1978).
  - 59 AM. JUR. 2D *Parent and Child* §§ 92, 96, 138 (1987).
  - George L. Blum, Annotation, *Intentional Infliction Of Distress In Marital Context*, 110 ALR5th 371 (2003).
  - Gregory G. Sarno, Annotation, *Liability Of Religious Association For Damages For Intentionally Tortious Conduct In Recruitment, Indoctrination, Or Related Activity*, 40 ALR4th 1062 (1985).
  - Jeffrey F. Ghent, Annotation, *Right Of Child Or Parent To Recover For Alienation Of Other’s Affection*, 60 ALR3d 931 (1974).
  - Annotation, *Alienation Of Child’s Affection As Affecting Custody Award*, 32 ALR2d 1005 (1953).
  - Annotation, *Liability Of Parent, Relative, Or Person In Loco Parentis In Action By Husband Or Wife For Alienation Of Affection*, 108 ALR 408 (1937).
- TEXTS & TREATISES:**
- LEONARD KARP AND CHERYL L. KARP, DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE (1989).  
§§7.09 - 7.10 “Alienation of affection of parent or child”
- COMPILER:**
- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. EMAIL: lawrence.cheeseman@jud.state.ct.us

**Table 3 Intentional Infliction of Emotional Distress**

# Intentional Infliction of Emotional Distress

## Officially Reported Cases

<p><u>Bouchard v. Sundberg</u>, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</p>	<p>"It is clear from the facts alleged in the amended complaint itself that the plaintiff was attempting to recast his claim for alienation of affections as a claim for <b>intentional infliction of emotional distress</b>. In particular, our reading of paragraph seven of the third count persuades us to conclude that this is nothing more than a claim for alienation of affections. As the legislature has abolished that cause of action, the court properly granted the defendants' motion to strike the third and fourth counts of the amended complaint."_(emphasis added).</p>
<p><u>Whelan v. Whelan</u>, 41 Conn. Sup. 519, 521, 588 A.2d 251 (1991).</p>	<p>"The tort of intentional infliction of emotional distress was recognized by the Connecticut Supreme Court in <i>Petyan v. Ellis</i>, 200 Conn. 243, 253, 510 A.2d 1337 (1986)."</p>
<p><u>Gilman v. Gilman</u>, 46 Conn. Sup. 21, 22, 736 A.2d 199 (1999)</p>	<p>"To prevail upon a <b>claim for emotional distress</b>, a plaintiff must establish the following elements: "(1) that the [defendant] intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Emphasis added; internal quotation marks omitted.) Id. [<i>Petyan v. Ellis</i>, 200 Conn. 243, 253, 510 A.2d 1337 (1986)]." (emphasis added)</p>
	<p>The court finds that the aforementioned factors are sufficient to submit to a jury the question of whether the plaintiff's distress was severe.</p> <p>As to the named defendant's claims as to the other elements, the court finds that there are genuine issues of material fact as to whether the named defendant intended to inflict emotional distress and whether the named defendant's conduct caused the plaintiff's emotional distress." Ibid., p. 24</p>

# Intentional Infliction of Emotional Distress [cont'd]

## Unreported Connecticut Cases

Pantaleo v. Pantaleo, No. CV90-0294250 (Conn. Super. Ct., New Haven, Apr. 30, 1993), 1993 WL 148680, 1993 Conn. Super. LEXIS 1110.

“The issue before this court is whether an attorney who is prosecuting an action against his wife for vexatious litigation, malicious prosecution, libel, slander, and negligent and intentional infliction of emotional distress should be allowed to represent himself pro se when they continue to live as husband and wife.”

## Secondary Sources

ALR Annotation

George L. Blum, Annotation, *Intentional Infliction Of Distress In Marital Context*, 110 ALR5th 371 (2003).

# Breach of Promise to Marry and Return of Engagement Ring and Courtship Gifts

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**SCOPE:**

Bibliographic resources relating to action for breach of promise to marry and the return of engagement ring and courtship presents.

**DEFINITIONS:**

- “Although actions arising from alienation of affection or from breach of promise to marry are barred by Gen. Stat. 52-572 (b), the statute does not preclude an action for return of things given in reliance of false and fraudulent representation nor affect rights and duties determinable by common law principles.” Rabagleno v. King, No. 0325871 (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Jan. 15, 1991), 1991 Ct. Sup. 686, 687, 1991 WL 27914, 1991 Conn. Super. LEXIS 85.
- “A cause of action for fraudulent misrepresentation is an exception to the Heart Balm Act where one cohabitant claims she was fraudulently induced to transfer money or property to the other cohabitant.” Weathers v. Maslar, No. CV 99 0088674, 2000 Ct. Sup. 1197, 1201, 2000 WL 157543 (Jan. 31, 2000).
- “The Supreme Court decision in Piccininni v. Hajus, 180 Conn. 369, 429 A.2d 886 (1980), outlines the right of a donor to obtain reimbursement for expenditures occurred in contemplation of marriage. The case holds that the so-called Heart Balm statute, General Statutes § 52-572b, regarding breach of a promise to marry, only bars claims of humiliation, mental anguish and the like, but does not affect “rights and duties determinable by common law principles.” *Id.*, 372. Thus, a donor of money or property that were given “conditional upon a subsequent ceremonial marriage” may recover when the condition is broken by the donee. *Id.* An action for false and fraudulent representations will also be permitted. *Id.*, 373. The dissent by Chief Justice Peters points out that a donor can regain money or property obtained by the donee as a result of “trickery, cunning and duplicitous dealing” under the doctrine of “unjust enrichment;” *Id.*, 375-76; which is the remedy invoked by the plaintiff in the second count of his complaint. Thus, the plaintiff has pleaded a valid cause of action and the resolution of plaintiff’s application turns to whether he has shown probable cause that he will recover under unjust enrichment.” Greene v. Cox, No. CV 95 0147177 (Conn. Super. Ct., Jud. District, Stamford-Norwalk at Stamford, Dec. 19, 1995) 1995 Ct. Sup. 14120, 14122, 1995 WL 780893, 1995 WL 780893.

**STATUTES:**

- CONN. GEN. STAT. (2003)  
§ 52-572b Alienation of affections and breach of promise actions  
abolished

**HISTORY:**

- 1967 CONN. ACTS 275 (Reg. Sess.)  
“No action shall be brought upon any cause arising after October 1, 1967 from alienation of affection or from breach of a promise to marry.”
- 1982, CONN. ACTS 160 §238. An act adopting a technical revision of Title 52.

**RECORDS & BRIEFS:**

- A-724 CONNECTICUT SUPREME COURT RECORDS AND BRIEFS (January 1980). *Piccininni v. Hajus*, 180 Conn. 369, 373, 429 A.2d 886 (1980).  
[Figure 1. Substituted Complaint](#)  
[Figure 2. Amendment to First Count of Plaintiff's Complaint](#)

**COURT CASES**  
(Connecticut):

- *Dore v. Devine*, No. CV00-0176933S (Conn. Super. Ct., Jud. District of Stamford-Norwalk at Stamford, Oct. 6, 2000), 2000 WL 1682709, 2000 Conn. Super. LEXIS 2764. “The defendant administrator argues that all four counts are legally insufficient because of the Connecticut Heart Balm Act, General Statutes § 52-572b. Initially, the court notes that this case does not involve, whatsoever, the alienation of affections, and, therefore, any propositions that the defendant uses from such cases as an analogy, are unpersuasive. The narrow issue in this case is whether the plaintiffs claims fall within a ‘cause arising from . . . breach of a promise to marry,’ as stated and prohibited by § 52-572b. After consulting the cases which have interpreted § 52-572b, this court finds that the plaintiffs claims are not barred by the Heart Balm statute.”
- *Gural v. Fazzino*, No. CV94-70800 (Conn. Super. Ct., Jud. District, Middlesex at Middletown, April 19, 1996), 16 CONN. L. RPTR. 552, 553, 1996 WL 526803. “An exception to the Heart Balm Act allows common law principles to govern actions for the return of property allegedly transferred in reliance on fraudulent representations . . . .”
- *Mancini v. Wyzik*, No. CV93-0520862 S (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Apr. 13, 1994), 1994 WL 146336, 1994 Conn. Super. LEXIS 944. “Although it would appear that certain portions of the complaint allege a breach of promise to marry, other portions of the complaint appear to allege a breach of contract wherein defendant's promises caused the plaintiff to sell her own home and to expend substantial funds to complete renovations in a home purchased by the defendant. The court has jurisdiction to hear such a breach of contract.”
- *Cromwell v. Danforth*, 222 CONN. 150, 151, 609 A.2D 654 (1992). “This is an action seeking the return of a gift allegedly made in contemplation of marriage and seeking an accounting of jointly owned real property . . . .”
- *Rabagleno v. King*, No. 0325871 (Jan. 15, 1991), 1991 Ct. Sup. 686, 686-687. “The plaintiff brings this action on the expressed grounds of infliction of emotional distress. It is brought in two counts, the first in intentional infliction of emotional distress and the second by reckless conduct. The factual basis alleged that the plaintiff, while employed by a business in which the defendant had a partnership interest, was seduced both physically and emotionally by him. By reason of the seduction and the promise of the defendant to divorce his wife and marry the plaintiff, she left her husband and has suffered emotional distress. The plaintiff alleged that the conduct of the defendant, having knowledge of the past medical history of the plaintiff including hospitalization and treatment for mental or emotional disorders, had intended to cause her emotional distress or alternatively he was reckless in that he knew or should have known that mental distress would be the result of his conduct.”

- Piccininni v. Hajus, 180 Conn. 369, 373, 429 A.2d 886 (1980). “The plaintiff here is not asking for damages because of a broken heart or a mortified spirit. He is asking for the return of things which he bestowed in reliance upon the defendant’s fraudulent representations. The Act does not preclude an action for restitution of specific property or money transferred in reliance on various false and fraudulent representation, apart from any promise to marry, as to their intended use.”
- White v. Finch, 3 Conn. Cir. 138, 209 A.2d 199 (1964).

**WEST KEY  
NUMBERS:**

- *BREACH OF MARRIAGE PROMISE ACTIONS*  
#13 Defenses  
#24-30 Damages
- *GIFTS* #34

**DIGESTS:**

- ALR DIGEST: *Breach of promise*
- DOWLING’S DIGEST: *Breach of Promise*
- CONNECTICUT FAMILY LAW CITATIONS: *Premarital relationships*

**ENCYCLOPEDIAS:**

- 11 C.J.S. *Breach of Marriage Promise* (1995).
- 38A C.J.S. *Gifts* (1996).
- 12 AM. JUR. 2D *Breach of Promise* (1997).  
§§ 1-9. Agreement to marry  
§§ 10-16. The breach; right of action and remedies  
§§ 17-21. Defenses  
§§ 22-24. Damages  
§§ 25-30. Practice and procedure
- 38 AM. JUR. 2D *Gifts* (1999).  
§ 73. Gifts in contemplation of marriage  
§ 74. —Presumption arising from engagement  
§ 75. —Engagement rings and jewelry  
§ 76. —Effect of infancy of donee  
§ 77. Recovery based on fraud or unjust enrichment
- Elaine Marie Tomko, Annotation, *Rights In Respect Of Engagement And Courtship Presents When Marriage Does Not ensue*, 44 ALR5th 1 (1996).
- Annotation, *Measure And Elements Of Damages For Breach Of Contract To Marry*, 73 ALR2d 553 (1960).

**LAW REVIEWS:**

- S.G. Kopelman, *Breach of Promise to Marry: Connecticut Heart Balm Statute—Piccininni v. Hajus*, 13 CONNECTICUT LAW REVIEW 595.  
I. Facts and Procedural History of Piccininni  
II. Supreme Court Decision  
III. History of Heartbalm Acts  
IV. New York Policy—Conditional Gift Actions  
V. Criticism: Tort Action for Fraud

**COMPILER:**

- Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. EMAIL: lawrence.cheeseman@jud.state.ct.us

## Figure 1 Substituted Complaint

(see Figure 2 for amendment to First count)

### SUBSTITUTED COMPLAINT

#### FIRST COUNT:

1. Since June of 1973, the Defendant, at the request of the Plaintiff, continually promised to marry the Plaintiff, and told the Plaintiff that after they were married they would occupy, as their home, the house and property owned by her at 119 Corbin Road, Hamden, Connecticut.

2. The Plaintiff, relying upon the promises of the Defendant, remained ready, and willing to marry the Defendant.

3. The Plaintiff, relying upon said Defendant's promises, expended sums of money to renovate and improve the house and property owned by the Plaintiff at 119 Corbin Road, Hamden, Connecticut; expended sums of money for the following furniture and furnishings for said home: China closet \$1,649.00; Dining room table \$897.00; Dining room table cover set \$100.00; Dining room arm chairs, 2 at \$238.00 each, \$476.00 and 4 at \$299.00 each, \$876.00; 2 end tables at \$360.00, \$720.00; a large credenza \$1,200.00; Brass candle holder \$30.00; Air conditioner \$500.00; Coffee table \$800.00; Tiffany lamps \$300.00; Couch \$1,000.00; T.V. \$400.00; space heater \$90.00; Rocking chair \$75.00; Picture in hallway \$100.00; Dehumidifier \$80.00; Decorative African masks \$100.00; Painting 75.00; 3 throw rugs \$250.00; Statue in living room \$100.00; Painting in living room \$500.00; Black commode \$500.00; Standing folding screen \$300.00; 2 antique swords \$50.00; Mirror & china closet \$75.00; Outside lamp \$35.00; Clock radio \$35.00; Combination can opener & ice crusher 0.00; Set of carving knives & brass table serving tray \$125.00; Electric blanket \$60.00; Crystal champagne & brandy glasses 12 at \$15.00 each, \$165.00; 6 crystal water glasses at \$15.00 each \$90.00; Lotus bowls 6 at \$10.00 each \$60.00;

Lotus salad bowls 2 at \$20.00 each \$40.00; Crystal candle holders \$45.00; Table linens \$100.00; Kitchen stools 2 at \$70.00 each \$140.00; Framed picture of Fiji \$70.00; Bookshelf in playroom \$40.00; Hanging flowerpot holder \$25.00; Wingback chair \$400.00; Swivel chair 2 at \$350.00 each \$700.00; Round marble end table \$75.00; Mirrored metal art piece \$90.00; Metal art \$75.00; Set of dishes \$100.00; Christmas tree lights \$100.00; Screen & storm door at main entrance \$70.00; Awning rear window \$70.00; Valance & curtain in kitchen \$100.00; Artificial plants in house \$200.00; Inlaid slate tile \$70.00; Norelco 12 cup coffee maker \$35.00; Night table \$121.00; Fireplace hearth \$164.00; Reupholster chair \$149.00; Another commode \$234.00; Bathroom furnishings \$320.00; expended: sums of money for the following automobile, jewelry and furs: 1973 Buick Regal \$5,000.00; Engagement ring \$3,500.00; Wedding band ring & matching earrings \$1,675.00; Topaz ring \$75.00;; Separate set of earrings \$400.00; Opal necklace \$90.00; Gold ring \$100.00; Fox fur jacket \$1,300.00; expended sums of money for dresses, coats, shoes, sweaters, and other items of clothing for the Defendant, approximately \$1,500.00; Plaintiff also expended

sums of money for other personal items for the Defendant, all of said purchases referred to in this paragraph, being based upon the Defendant's promise that she would become his wife.

4. In June of 1978 the Defendant informed the Plaintiff that she would not marry him and that she intended to marry another man, which man she subsequently did marry, contrary to her promise to the Plaintiff.

**SECOND COUNT:**

1. During the period June 1973 to June 1978, in response to the Plaintiff's request, the Defendant represented to the Plaintiff that she would marry him and that they would occupy, as their home, the house and property owned by her at 119 Corbin Road, Hamden, Connecticut.

2. The Plaintiff, relying upon said representations made to him by the Defendant, expended sums of money to renovate and improve the house and property owned by the Plaintiff at 119 Corbin Road, Hamden, Connecticut; expended sums of money for furniture and furnishings for said Home, the specific items and amounts expended for said items being set forth in Paragraph 3 of the First Count of this Complaint and made a part hereof; expended sums of money in purchasing an automobile, jewelry, furs, and clothing for the Defendant, the specific items and the amounts expended for said items being set forth in Paragraph 3 of the First Count of this Complaint and made a part hereof; expended sums of money for other personal items for the Defendant.

3. Said representations made by the Defendant to the Plaintiff were false, known by the Defendant to be false, and were made for the purpose inducing the Plaintiff to make expenditures set forth in Paragraph 2 of the Second Count of this Complaint.

4. In June of 1978, the Defendant told the Plaintiff that she would not marry him and that he intended to marry another man.

5. As a result of the false representation made by the Defendant to the Plaintiff, which he Plaintiff relied upon, the Plaintiff expended approximately \$40,000.00 in renovating, improving and furnishing the home at 119 Corbin Road, Hamden and in the purchase of personal items for the Defendant and the Defendant's children because he believed the Defendant would become his wife, as she represented to him.

**THIRD COUNT:**

1. During the period June 1973 to June 1978,9 the Plaintiff and the Defendant planned to be married, became engaged and agreed to renovate, improve and furnish the house and property owned by the Defendant at 119 Corbin Road, Hamden, Connecticut, which they would occupy as a home, after their marriage.

2. Based upon their plans to marry, the Plaintiff expended sums of money to renovate improve the house and property at 119 Corbin Road, Hamden, Connecticut, expended sums of money for furniture and furnishings for said home, and expended sums of money in purchasing an automobile, jewelry, furs, clothing and other personal items for the Defendant, said specific items and the amount expended being set forth in Paragraph 3 of the First Count of this Complaint and made a part hereof.

3. In June of 1978, the Defendant told the Plaintiff that she would not marry him and that she intended to marry another man.

4. The Defendant has been unjustly enriched by the expenditures of the Plaintiff hereinbefore referred to, and the Plaintiff is entitled to be reimbursed by the Defendant for the renovation and improvement of her property and is entitled to the return of furniture and furnishings which he purchased and the return of certain personal items which he purchased.

THE PLAINTIFF

By \_\_\_\_\_ His Attorney

Filed January 9, 1979.

**Figure 2 Amendment to first count of plaintiff's complaint**

**AMENDMENT TO FIRST COUNT OF  
PLAINTIFF'S COMPLAINT**

1. Since some time in 1973 the Plaintiff and the Defendant planned to marry.
2. The Defendant, prior to said date, and since said date has owned and occupied and now owns and occupies the house and property known as and located at 119 Corbin Road, Hamden, Connecticut.
3. Commencing some time in 1974, the Plaintiff was allowed to occupy said house with the Defendant as his home.
4. In consideration of the Defendant agreeing that the Plaintiff could continue to occupy said premises as his home before and after they were married, that it would be his home as well as hers, the Plaintiff agreed to and did expend sums of money and furnished his own time and labor to renovate and improve the house and property and purchased various articles of furniture and furnishings and other items of personal property for said house and property.
5. The Defendant did not marry the Plaintiff and in June of 1978 the Defendant informed the Plaintiff that he could no longer occupy the premises as his home and requested him to leave, which he did.
6. Since the Defendant failed to comply with her agreement that the Plaintiff could continue to occupy said premises as his home, that it would be his home as well as hers, he demanded compensation for renovating and improving the Defendant's house and property at 119 Corbin Road, Hamden, Connecticut.
7. After the Defendant failed to comply with her agreement, the Plaintiff demanded that the Defendant return to him the various articles of furniture and furnishings and other items of personal property which he had purchased for the house.
8. The Defendant has refused and continues to refuse to reimburse the Plaintiff for the money which he expended in renovating and improving the house and property at 119 Corbin Road, Hamden.
9. The Defendant has refused and continues to refuse to return the articles of furniture and furnishings and other items of personal property which belong to the Plaintiff and were purchased by him for the house at 119 Corbin Road, Hamden.
10. As a result of the renovation and improvement of said house and property by the Plaintiff, said house and property has increased in value and the Plaintiff claims that he is entitled to be compensated for effecting said increase in value.

Filed March 5, 1979.

# Chapter 2

## Domestic Violence in Connecticut

*A Guide to Resources in the Law Library*

**Family violence:** “means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault between family or household members. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur.” CONN. GEN. STAT. § 46b-38a (1) (2003).

**Family or household member:** “means (A) spouses, former spouses; (B) parents and their children; (C) persons eighteen years of age or older related by blood or marriage; (D) persons sixteen years of age or older other than those persons in subparagraph (C) presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or have recently been in, a dating relationship.” CONN. GEN. STAT. § 46b-38a (2) (2003).

**Family violence crime:** means a crime as defined in section 53a-24 which, in addition to its other elements, contains as an element thereof an act of family violence to a family member and shall not include acts by parents or guardians disciplining minor children unless such acts constitute abuse.” CONN. GEN. STAT. § 46b-38a (3) (2003)

**Restraining orders vs. protective order:** “Restraining orders differ from protective orders in that the former are civil and can be issued without the accused person being arrested. Protective orders in a family violence situation are criminal and are issued after the accused has been arrested for committing a family violence crime.” OLR Bill Analysis substitute Senate Bill 334 (October 1, 2002).

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# Section 2.1

## Family Violence Restraining Order

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to a family violence restraining order issued under CONN. GEN. STATS. § 46b-15 (2003).

### **DEFINITIONS:**

- **Application for relief from abuse:** " Any family or household member as defined in section 46b-38a who has been subjected to a continuous threat of present physical pain or physical injury by another family or household member or person in, or has recently been in, a dating relationship who has been subjected to a continuous threat of present physical pain or physical injury by the other person in such relationship may make an application to the Superior Court for relief under this section." CONN. GEN. STAT. § 46b-15(a) (2003).
- **Affidavit:** "The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought." CONN. GEN. STAT. § 46b-15(b) (2003).
- **Hearing:** "Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order." Ibid.
- **Relief:** "The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. Such order may include temporary child custody or visitation rights and such relief may include but is not limited to an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate." Ibid.
- **Ex parte order:** "If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate." Ibid.
- **Time limitation:** "No order of the court shall exceed six months, except that an order may be extended by the court upon motion of the applicant for such additional time as the court deems necessary." CONN. GEN. STAT. § 46b-15(d) (2003).
- **Cost of service:** "The applicant shall cause notice of the hearing pursuant to subsection (b) of this section and a copy of the application and the applicant's affidavit and of any ex parte order issued pursuant to subsection (b) of this section to be served on the respondent not less than five days before the hearing. The cost of such service shall be paid for by the judicial branch." § 46b-15(e) (2003).

- **Other remedies:** “An action under this section shall not preclude the applicant from seeking any other civil or criminal relief.” CONN. GEN. STAT. § 46b-15(h) (2003).

#### **STATUTES:**

- 42 U.S.C. (2002).  
§ 280b-1a Interpersonal violence within families and among acquaintances  
§§ 10401 – 10418 Family violence prevention and services
- CONN. GEN. STAT. (2003).  
Chapter 815a. Family matters  
§ 46b-15. Relief from abuse by family or household member or person in dating relationship. Application. Court orders. Duration. Copies. Expedited hearing for violation of order. Other remedies.  
§ 46b-15a. Protective order issued by another state. Registration. Notice. Hearing. Confirmation.  
§ 46b-15b. Duties of Superior Court re applicants for restraining orders in domestic violence situations.  
§ 46b-16. Petition to Superior Court for ex parte order temporary care and custody of child when parent arrested for custodial interference. Duration of order.  
Chapter 952. Penal code: Offenses  
§ 53a-107. Criminal trespass in the first degree: Class A misdemeanor

#### **LEGISLATIVE**

- 2002 CONN. ACTS 127 §1 (Reg. Sess.). (**NEW**) (*Effective October 1, 2002*).  
(b) Criminal violation of a restraining order is a class A misdemeanor.
- 2002 CONN. ACTS 127 § 2 (Reg. Sess.) (**NEW**) (*Effective October 1, 2002*).
- 2002 CONN. ACTS 132 § 54 (Reg. Sess.) (**NEW**) (*Effective October 1, 2002*).

#### **REGULATIONS:**

- CONN. AGENCIES REGS.  
§§ 17a-101-11 to –13. Circumstances requiring immediate removal of child from his/her home 96 hour hold (eff. 2/1/94).  
§§ 17a-101(e) –1 to –6. Reports of child abuse and neglect (eff. 2/1/94).

#### **FORMS:**

- [Official Judicial forms](#)  
JD-FM-137. Application for Relief from Abuse  
JD-FM-138. Affidavit – Relief from Abuse  
JD-FM-75. Application for Waiver of Fees  
JD-FM-139. Ex Parte Restraining Order—Relief from Abuse  
JD-FM-140. Order and Notice of Court Hearing—Relief from Abuse  
JD-FM-141. Restraining Order After Hearing—Relief from Abuse  
JD-FM-173. Motion for Contempt  
JD-FM-174. Motion for Modification.

#### **LEGISLATIVE:**

- Sandra Norman-Eady, *Restraining Orders*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH REPORT No. 2002-R-0565 (June 7, 2002).
- Sandra Norman-Eady, *Statistics on Assaults Against Woman*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH REPORT No. 2001-R-0116 (January 18, 2001). <http://www.cga.state.ct.us/2001/rpt/olr/2001-r-0116.doc>
- Sandra Norman-Eady, *Domestic Violence*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH REPORT No. 99-R-0031 (January 5, 1999). <http://www.cga.state.ct.us/ps99/rpt/olr/htm/99-r-0031.htm>

A summary of the family violence laws and a summary of all major changes to the laws by year.

- Benjamin H. Hardy, *Firearm at the Scene of Domestic Violence*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH Report No. 99-R-0562 (April 26, 1999).  
<http://www.cga.state.ct.us/ps99/rpt/olr/99-r-0562.doc>  
“whether other states authorize police officers making arrests at the scene of family violence to seize firearms in an offender’s possession or in plain view.”
- Laura Jordan, *Domestic Abuse Victims' Ability to Collect Unemployment Compensation and Explanation Of Non-Chargeable Claims*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH Report No. 99-R-0756 (July 27, 1999). <http://www.cga.state.ct.us/ps99/rpt/olr/htm/99-r-0756.htm>

#### **CASES:**

- See [Table 2](#) for unreported Connecticut decisions..
- Klein v. City Of Stamford, 43 Conn. Sup. 441, 441-442, 658 A.2d 986 (1994).
- Thurman v. City of Torrington, 595 F.Supp. 1521 (1984).
- DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 109 S., Ct. 998, 103 L.Ed 2d 249(1989).

#### **WEST KEY NUMBER:**

- Criminal Law # 474.4(3) Battered or abused women or spouses

#### **ENCYCLOPEDIAS**

- 6 AM. JUR. 2d *Assault and Battery* (1999).  
§ 33. Parents and persons vested with quasi-parental authority—Domestic violence statutes
- 24 AM. JUR. 2d *Divorce and Separation* (1998).  
§§ 40-43. Physical violence or threat of violence
- *Cause of Action for Modification of Child Custody or Visitation Arrangement Based on Abuse of Child*, 6 COA 2d 287 (1994).

#### **PAMPHLETS:**

- PROCEDURES FOR RELIEF FROM ABUSE PROCESS AND AGENCIES FOR SERVICE (rev. 12-94).
- HOW TO GET A RESTRAINING ORDER (July 2002). <http://www.slsc.org>
- HOW TO EXTEND A RESTRAINING ORDER (July 2001). <http://www.slsc.org>

#### **TEXTS & TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (1999).  
§ 22.2 Family violence and relief from abuse  
§ 22.3 Application for relief from abuse—Procedure  
§ 22.4 Application for relief from abuse—Form  
§ 22.5 Scope of relief available under C.G.S.A. §46b-15  
§ 22.6 Enforcement of orders under C.G.S.A. §46b-15
- 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).  
Chapter 19. Interference with custody and visitation
- LEONARD KARP AND CHERYL KARP, DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT AND SEXUAL ABUSE (1989).  
Chapter 1. Spousal abuse  
§ 1.17. Special statutes concerning domestic violence protective orders
- 1 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2001).

Chapter 6. Handling domestic violence cases

§ 6.02. Civil protection orders

- [1]. Overview
- [2]. When to seek a civil protection order
- [3]. Obtaining a civil protection order; Procedural considerations
- [4]. Obtaining emergency relief
- [5]. Contested hearings
- [6]. Enforcement of protective orders

- LAW REVIEWS:**
- Elizabeth Pendo, *The Relationship Between Domestic Violence And Custody: A Pathfinder*, 12 LEGAL REFERENCE SERVICES QUARTERLY 5 (1993).

**COMPILER:** Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 4 CONN. GEN. STAT. § 46b-15 (2003)

CONN. GEN. STAT. § 46b-15 (2003)	
<p><b>Affidavit</b></p> <p><b>Hearing</b></p> <p><b>Relief</b></p> <p><b>Ex parte order</b></p>	<p>“(b) The application form shall allow the applicant, at the applicant's option, to indicate whether the respondent holds a permit to carry a pistol or revolver or possesses one or more firearms. The application shall be accompanied by an <b>affidavit</b> made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a <b>hearing</b> on the application be held not later than fourteen days from the date of the order. The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. Such order may include temporary child custody or visitation rights and such relief may include but is not limited to an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an <b>ex parte order</b> granting such relief as it deems appropriate. If a postponement of a hearing on the application is requested by either party and granted, the order shall not be continued except upon agreement of the parties or by order of the court for good cause shown.” CONN. GEN. STAT. § 46b-15(b) (2003). (emphasis added)</p>
<p><b>Warning</b></p> <p><b>Criminal Trespass</b></p>	<p>“(c) Every order of the court made in accordance with this section shall contain the following language: ‘This order may be extended by the court beyond six months. In accordance with section 53a-107, entering or remaining in a building or any other premises in violation of this order constitutes <b>criminal trespass</b> in the first degree. This is a criminal offense punishable by a term of imprisonment of not more than one year, a fine of not more than two thousand dollars or both.’” CONN. GEN. STAT. § 46b-15(c) (2003). (emphasis added)</p>
<p><b>Time limitation</b></p> <p><b>Extension</b></p>	<p>“(d) No order of the court shall <b>exceed six months</b>, except that an order may be <b>extended</b> by the court upon motion of the applicant for such additional time as the court deems necessary. If the respondent has not appeared upon the initial application, service of a motion to extend an order may be made by first-class mail directed to the respondent at his or her last known address.” CONN. GEN. STAT. § 46b-15(d) (2003). (emphasis added)</p>

<p>[cont'd]</p> <p><b>Notice</b></p> <p><b>Cost</b></p> <p><b>Jurisdiction</b></p>	<p>“(e) The applicant shall cause <b>notice</b> of the hearing pursuant to subsection (b) of this section and a copy of the application and the applicant's affidavit and of any ex parte order issued pursuant to subsection (b) of this section to be served on the respondent not less than five days before the hearing. The <b>cost</b> of such service shall be paid for by the judicial branch. Upon the granting of an ex parte order, the clerk of the court shall provide two certified copies of the order to the applicant. Upon the granting of an order after notice and hearing, the clerk of the court shall provide two certified copies of the order to the applicant and a copy to the respondent. Every order of the court made in accordance with this section after notice and hearing shall contain the following language: ‘This court had <b>jurisdiction</b> over the parties and the subject matter when it issued this protection order. Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, 18 USC 2265, this order is valid and enforceable in all fifty states, any territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and tribal lands.’ Immediately after making service on the respondent, the state marshal shall provide a true and attested copy of any ex parte order, including the applicant's affidavit and a cover sheet stating the date and time the respondent was served, to the law enforcement agency for the town in which the applicant resides. If the respondent does not reside in such town, the state marshal shall immediately transmit by facsimile a true and attested copy of the order, including the applicant's affidavit, to the law enforcement agency for the town in which the respondent resides. The clerk of the court shall send, by facsimile or other means, a copy of any ex parte order and of any order after notice and hearing, or the information contained in any such order, to the law enforcement agency for the town in which the applicant resides and, if the respondent resides in a town different than the town in which the applicant resides, to the law enforcement agency for the town in which the respondent resides, within forty-eight hours of the issuance of such order. If the applicant is employed in a town different than the town in which the applicant resides, the clerk of the court shall send, by facsimile or other means, a copy of any such order, or the information contained in any such order, to the law enforcement agency for the town in which the applicant is employed within forty-eight hours of the issuance of such order. If the applicant is employed in a town different than the town in which the applicant resides, or in which the respondent resides, the state marshal shall transmit by facsimile a true and attested copy of any such order, including the applicant's affidavit, to the law enforcement agency for the town in which the applicant is employed.” CONN. GEN. STAT. § 46b-15(e) (2003) (emphasis added).</p>
<p><b>Contempt</b></p>	<p>“(g) When a motion for contempt is filed for violation of a restraining order, there shall be an expedited hearing. Such hearing shall be held within five court days of service of the motion on the respondent, provided service on the respondent is made not less than twenty-four hours before the hearing. If the court finds the respondent in contempt for violation of an order, the court may impose such sanctions as the court deems appropriate.” CONN. GEN. STAT. § 46b-15(g) (2003) (emphasis added).</p>
<p><b>Other remedies</b></p>	<p>“An action under this section shall not preclude the applicant from seeking any other <b>civil or criminal relief</b>.” CONN. GEN. STAT. § 46b-15(h) (2003) (emphasis added)</p>

**Table 5 Unreported Connecticut Decisions on 46b-15 Restraining Orders**

<h2 style="text-align: center;">Unreported Connecticut Decisions: 46b-15 Restraining Orders</h2>	
Odom v. Odom, No. FA 02-0097864S, 2002 Ct. Sup. 4896, 4900, 2002 WL 1042492 (Apr. 30, 2002).	“In extending the statute to encompass dating relationships, the legislature has thus shown that restraining orders are intended to apply to those in familial, or quasi-familial relationships, ones that have aspects of intimacy, or repeated contact, or personal familiarity in ways that differ from mere friendship: 'a relationship which is more than - certainly more than strangers or more than a casual friend, some type of personal relationship that goes beyond the run of the mill acquaintance-type situation.' ([H.R. Proceedings, 1999 Sess., May 28, 1999] Id. at 3554.) The entire legislative scheme is intended to offer legal protection to people where the threat or risk of violence derives from the powerful feelings that can occur in these intimate personal relationships.”
Ibid.	“This court thus concludes that the restraining order statute is indeed applicable to protect one former sister-in-law against a former sister-in-law. Their relationship arose out of marriage, but though matrimony has ended, the 'affinity' of the parties survives.” <b>[Sister-in-law]</b>
Carroll v. Carroll, No. FA 99-104387, 1999 Ct. Sup. 9547 at 9548, 1999 WL 596382 (Judicial District, Hartford, July 26, 1999).	"Lastly, since this action began as a 46b-15 application, the court finds that the intent of this statute was to protect the citizens of Connecticut from conduct alleged in the application. The court may fashion any orders it deems appropriate under the statute. This may include the limitation or denial of custody and visitation for a minor child if the Court feels that there is a fear of immediate physical harm.”
Ryan v. Stankiewicz, No. FA 00-0105280-S, 2000 Ct. Sup. 8807, 8808. (Jul. 26, 2000).	“Connecticut General Statutes § 46b-15 (as defined by the provisions in Section 46b-38a) is a statute in derogation of the common law and as such must be strictly construed.”
Kulak v. Grant, No. FA 98 0103760S, 1999 Ct. Sup. 15459 at 15461, 1999 WL 1207152 (Judicial District, Hartford, Nov. 29, 1999).	“The statute authorizing the issuance of civil restraining orders provides that the court may impose such sanctions as it deems appropriate for contempt of the order. Connecticut General Statutes, Section 46b-15(g). These include, attorneys fees and costs. Connecticut General Statutes, Section 52-256b. To find a party in contempt, the court must find that a person has disobeyed an order of the court, <u>Fitzgerald v. Fitzgerald</u> , 16 Conn. App. 548, 551 (1988).”
Broxton v. Broxton, No. 31 86 99, 1996 Ct. Sup. 2153, 2160-2161 (Mar. 19, 1996).	"On September 21, 1994, the defendant appeared in court for the scheduled hearing on the restraining order. On that date, the parties entered into an agreement that the ex parte restraining order, entered on September 13, 1994, be vacated. The agreement further provided and the court ordered, as follows: The parties, having appeared before the Court and having requested that the ex parte restraining order entered 9-13-94 be vacated;"

## Section 2.2

# Family Violence Protective Order

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*A Guide to Resources in the Law Library*

### SCOPE:

Bibliographic resources relating to family violence protective order under Conn. Gen. Stats. § 46b-38c.

### DEFINITION:

- **Protective orders in a family violence situation:** "are criminal and are issued after the accused has been arrested for committing a family violence crime." OLR Bill Analysis substitute Senate Bill 334 (October 1, 2002).
- **Arrest:** "Whenever a peace officer determines upon speedy information that a family violence crime . . . except a family violence crime involving a dating relationship, has been committed within such officer's jurisdiction, such officer shall arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties or (3) be based solely on a request by the victim." CONN. GEN. STAT. § 46b-38b(a) (2003).
- **Firearm at scene of domestic violence,** Ibid..
- **Protective Order:** "A protective order issued under this section may include provisions necessary to protect the victim from threats, harassment, injury or intimidation by the defendant, including but not limited to, an order enjoining the defendant from (1) imposing any restraint upon the person or liberty of the victim; (2) threatening, harassing, assaulting, molesting or sexually assaulting the victim; or (3) entering the family dwelling or the dwelling of the victim. Such order shall be made a condition of the bail or release of the defendant . . . ." CONN. GEN. STATS. § 46b-38c(e) (2003).

### STATUTES:

- Violence Against Women Act of 1994, 18 U.S.C. § 2265 (2002).
- CONN. GEN. STAT. (2003)
  - Chapter 815e. Marriage
    - § 46b-38a. Family violence prevention and response: Definitions
    - § 46b-38b. **Investigation of family violence crime by peace officer. Arrest. Assistance to victim. Guidelines. Education and training program.**
    - § 46b-38c. Family violence response and intervention units. Local units. Duties and functions. Protective orders. Pretrial family violence education program.
    - § 46b-38d. Family violence offense report by peace officer. Compilation of statistics by Commissioner of Public Safety. Report to Governor and General Assembly.
    - § 46b-38f. Statistical summary of family violence cases maintained by Family Division. Annual report to Governor and General Assembly.

- § 46b-38g. Programs for children impacted by domestic violence
- § 53a-40e. Standing criminal restraining order
- § 53a-223a. Criminal violation of a protective order: Class D Felony
- § 54-63c. Release by law enforcement officer.
- § 54-63d. Release by bail commissioner
- (b). No person shall be released upon the execution of a written promise to appear or the execution of a bond without surety if the person is charged with the commission of a family violence crime, as defined in section 46b-38a, and in the commission of such crime the person used or threatened the use of a firearm.

- REGULATIONS OF CONNECTICUT STATE AGENCIES
  - § 54-222a-3. Duties of peace officers. Responsibilities of peace officers. Other victims shall receive a victim assistance card
  - (c). A victim of Family Violence, as defined by Section 46b-38b of the Connecticut General Statutes, shall receive a card. (eff. 9/26/90).

#### **FORMS:**

- JD-CR-58 Family Violence Protective Order

#### **CASES:**

- State v. Doe, 46 Conn. Supp. 598, 598, 765 A.2d 518 (2000). "The defendant, John Doe, challenges the constitutionality of the laws and procedures used in Connecticut courts which provide for issuing protective orders that result in barring a person from their home as a result of an arrest for a family violence crime."
- State v. Martino, 61 Conn. App. 118, 120-121, 762 A.2d 6 (2000). "In response, the victim called the police. Although the victim feared the defendant and did not want to press charges, the police arrested the defendant pursuant to the state's family violence law, General Statutes § 46b-38b. He was charged with disorderly conduct and interfering with a police officer, and was released on bail. Later that same day, the Superior Court issued a family violence protective order that prohibited the defendant from contacting the victim in any manner. The defendant received a copy of the protective order, and a police officer reviewed the terms of the order with him."
- State v. Taveras, 49 Conn. App. 639, 716 A.2d 120 (1998).
- In re Alana S., 44 Conn. Sup. 235, 683 A.2d 425 (1996).

#### **WEST KEY NUMBERS:**

- Breach of the Peace
  - # 15 Security or order to keep peace or protect family
  - # 15.1
  - # 17

#### **ENCYCLOPEDIAS:**

- 11 C.J.S. *Breach of the Peace* (1995).
  - § 25. Orders of protection
- 28 C.J.S. *Domestic Abuse and Violence* (1996).
  - §§ 7-17. Proceedings for relief
  - §§ 18-23. Violation of order
- 24 AM. JUR. 2d *Divorce and Separation* (1998).
  - § 296. Orders of protection
  - § 297. —Excluding spouse from home
  - § 298. —Enjoining removal of child from jurisdiction

#### **TEXTS &**

- 1 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2001).

**TREATISES:**

Chapter 6. Handling domestic violence cases  
§ 6.03. Other types of protective orders  
[1]. Criminal protective orders

**LAW REVIEWS:**

- Michael J. Voris, *The Domestic Violence Civil Protection Order And The Role Of The Court*, 24 AKRON LAW REVIEW 423 (1990).

**COMPILER:**

Lawrence Cheeseman, Connecticut Judicial Branch Law Library at Middletown,  
One Court Street, Middletown, CT 06457. (860) 343-6560.

**Table 6 Registering an Out-of-state Protective Order in Connecticut**

<p style="text-align: center;"><b>Registering an Out-of-state Protective Order in Connecticut</b> <b>CONN. GEN. STAT. § 46b-15a (2003).</b></p>
<p>(a) A protective order issued by a court of another state may be registered in this state, by sending to the Superior Court in this state: (1) A letter or other document requesting registration; (2) two copies, including one certified copy, of the protective order sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the petitioner, the order has not been modified; and (3) the name and address of the person seeking registration except where such disclosure would jeopardize the safety of such person.</p>
<p>(b) On receipt of the documents required in subsection (a), the registering court shall cause the protective order to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.</p>
<p>(c) Within five days of the receipt by the registering court of the documents required by subsection (a) of this section, the petitioner shall notify any person named in the protective order of the registration of the documents by certified mail, return receipt requested, at the last-known address or by personal service, and provide any such person with an opportunity to contest the registration in accordance with this section. The notice required by this subsection shall state that (1) a registered protective order is enforceable as of the date of the registration in the same manner as a protective order issued by a court of this state, (2) a hearing to contest the validity of the registered protective order may be requested within twenty days after service of notice, and (3) failure to contest the registration shall, upon proof of notice, result in the confirmation of the protective order and preclude further contest of such protective order with respect to any matter that could be asserted.</p>
<p>(d) The respondent may request a hearing within twenty days after service of the notice. At any such hearing, the court shall confirm the registered order unless the person contesting the registration establishes that (1) the issuing court did not have jurisdiction, (2) the protective order sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so, or (3) the respondent was entitled to notice of the proceeding before the court that issued the order for which registration is sought, but no such notice was given.</p>
<p>(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law with respect to those who have received proper notice and the petitioner shall notify all such persons of the confirmation.</p>
<p>(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.</p>

**Table 7 Duties of Superior Court re applicants**

<p><b>Duties of Superior Court re applicants for restraining orders in domestic violence situations</b></p> <p><b>CONN. GEN. STATS. § 46b-15b (2003)</b></p>
<p>“The Superior Court shall provide any person who applies for a restraining order in a domestic violence situation with information on steps necessary to continue such order beyond the initial period and shall provide an applicant with information on how to contact domestic violence counselors and counseling organizations.”</p>

# Parental Kidnapping

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**International parental kidnapping.** “Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights . . . 18 USC §1204(a) (2002).

**“Custodial interference in the second degree:** Class A misdemeanor. (a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child.” CONN. GEN. STAT. § 53a-98 (2003).

**“Custodial interference in the first degree:** Class D felony. (a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state.” CONN. GEN. STAT. § 53a-97 (2003).

## Sections in this chapter:

§ 1 Hague Convention on the Civil Aspects of International Child Abduction _____	36
§ 2 Federal Parental Kidnapping Prevention Act (PKPA) _____	41
§ 3 Interstate (New law) _____	44
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\* The compiler wishes to acknowledge the contribution to this pathfinder of Steve Mirsky while an intern at the Law Library at Middletown.

## **Tables in this chapter:**

Table 6 Requirements of the Hague Convention

Table 7 Affirmative Defenses to International Parental Kidnapping

Table 8 Enforcement under UCCJEA

Table 9 Tort of child abduction or custodial interference

# Hague Convention on the Civil Aspects of International Child Abduction

*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to parental child abduction to and from the United States with specific emphasis on Connecticut courts.

**DEFINITIONS:**

- **Article 13:** "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —  
     **[Article 13]a** the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or  
     **[Article 13]b** there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.  
     The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.  
     In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence." [emphasis added].
- **Habitual residence:** "To determine the habitual residence, the court must focus on the child, not the parents, and examine past experience, not future intentions." *Friedrich v. Friedrich*, 983 F.2d 1396, 1401 (6<sup>th</sup> Cir. 1993).
- **Best interests of the child:** "The guiding principle in determining custody is the best interest of the child . . . . The best interest of the child include the child's interest in sustained growth, development, well-being, and continuity and stability of its environment." *Schult v. Schult*, 241 Conn. 767, 777, 699 A.2d 134 (1997).
- **Comity.** "judgments of courts of foreign countries are recognized in the United States because of comity due to the courts and judgments of one nation to another. Such recognition is granted to foreign judgments with due regard to international duty and convenience, on the one hand, and to rights of citizens of the United States and others under the protection of its laws, on the other hand." *Litvaitis v. Litvaitis*, 162 Conn. 540, 544, 295 A.2d 519 (1972).

**STATUTES:**

- HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, 51 Fed. Reg. 10494 (March 26, 1986). [*Reprinted in Turner v. Frowein*, 253 Conn. 312, 351, 752 A.2d 955 (2000)].
- INTERNATIONAL CHILD ABDUCTION REMEDIES ACT, P.L.100-300, 42 USC §§11601-11610. [*Reprinted in Appendix 32A of SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).*]
- CONN. GEN. STAT. § 46b-115jj (2001). "A court of this state shall enforce a foreign child custody determination or an order of a federal court or another state court for return of a child under The Hague Convention on the Civil Aspects of International Child Abduction made under factual circumstances in substantial conformity with the jurisdictional standards of this chapter, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115u to 46b-115gg, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state."

**LEGISLATIVE:**

- 1988 U.S.C.C.A.N. vol. 4 pp. 386-403  
Excerpts from H. Report # 100-525 including "section-by section analysis of the Committee amendment in the nature of a substitute"

**REGULATIONS:**

- International Child Abduction, 22 C.F.R. §§ 94.1 - 94.8 (rev. 4/1/03).  
§ 94.6 Procedures for children abducted to the United States  
§ 94.7 Procedures for children abducted from the United States

**COURT CASES:**

- *Turner v. Frowein*, 253 Conn. 312, 351, 752 A.2d 955 (2000). "We emphasize that we do not disturb or modify the trial court's finding that returning the child to the defendant would expose him to a 'grave' risk of harm, within the meaning of article 13b. Thus, if the trial court remains unable to find any reasonable means of repatriation that would not effectively place the child in the defendant's immediate custody, either expressly or de facto, it should deny the petition under the Hague Convention."
- *Blondin v. Dubois*, 189 F.3d 240, 249 (2d Cir. 1999). "Under the circumstances presented, we think it appropriate to remand this matter to the District Court for further consideration of the range of remedies that might allow *both* the return of the children to their home country *and* their protection from harm, pending a custody award in due course by a French court with proper jurisdiction."

**Unreported Connecticut Decisions**

- *Cruz v. Cruz*, No. CV 00-0341008-S, (Superior Court, Danbury, Dec. 27, 2002), 33 Conn. L Rptr. 594 at 595, 2002 Conn. Super. LEXIS 4195, 2002 WL 31955020. "The issue presented in a Hague Convention case for return of a minor child are:
  1. Has there been a wrongful removal or retention
  2. Is the child under the age of 18 years
  3. Has the child been removed or retained from his or her habitual residence
  4. Was the removal or wrongful retention of the child committed in violation of the 'custody rights' of the 'left behind' parent.The Court's analysis of this case has been limited to determining whether the minor child has been removed or retained from his 'habitual residence' in violation of the custody rights of the 'left behind' parent."

- Renovales v. Roosa, No. FA91-0392232 (Sep. 27, 1991), 1991 Conn. Super. LEXIS 2215, 1991 WL 204483 (Sep. 27, 1991). "The court finds that the respondent has failed to prove by 'clear and convincing' evidence that the children will be 'exposed' to grave risk of either physical or psychological harm or that they will be placed in an intolerable situation."
- Harliwich v. Harliwich, No. FA 98-68306 S, 1998 Conn. Super. LEXIS 3401, 1998 WL 867328 (Dec. 3, 1998). "There was no substantial evidence that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation."

#### **From Other Jurisdictions**

- Ohlander v. Larson, 114 F.3d 1531, 1534 (10<sup>th</sup> Cir. 1997). "The Convention is meant to provide for a child's prompt return once it has been established the child has been 'wrongfully removed' to or retained in any affiliated state."
- Friedrich v. Friedrich, 78 F.3d 1060, 1067 (6<sup>th</sup> Cir. 1996). "Once a plaintiff establishes that removal was wrongful, the child must be returned unless defendant can establish one of four defenses."
- Mohsen v. Mohsen, 715 F. Supp. 1063, 1065 (D.Wyo. 1989). "In light of the fact the petitioner's daughter was last habitually resident in Bahrain, a noncontracting state, the court concludes that the petitioner has no rights under the Convention and is therefore not entitled to seek redress under its remedial provisions."
- Com. ex rel. Zaubi v. Zaubi, 423 A.2d 333, 335-336 (Pa.1980). "Thus, the courts below were correct in their determination that a showing of 'physical or emotionally harmful' conditions in the custodial household was a necessary prerequisite to the exercise by the Greene County court of its jurisdiction to modify the Danish decree."

#### **WEST KEY NUMBERS:**

- *Parent and Child* #2(1). Custody and control of child. Nature and extent in general.
- *Parent and Child* #18. Enticing away Child
- *Kidnapping* #3. Person liable
- *Treaties* #8. Construction and operation of particular provisions

#### **DIGESTS:**

- ALR DIGEST: *Kidnapping*
- ALR INDEX: *Abduction and Kidnapping*
- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

#### **ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§ 34. Generally
- 59 AM. JUR. 2d *Parent and Child* (2002).  
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§32. Jurisdiction and venue  
§178. Other offenses
- 51 C.J.S. *Kidnapping* (1967).  
§3. Persons liable; defenses  
§4. —Kidnapping by parents, custodians, or their agent
- 5 C.O.A. 799 *Cause of action against noncustodial parent for interference with custody rights to child* (1983).
- Scott M. Smith, Annotation, *Construction And Application Of International Child Abduction Remedies Act* (42 USCS §§ 11601 et seq.), 125 ALR Fed

217 (1995).

**TREATISES:**

- SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).  
**Chapter 32 *International Enforcement of Child Custody***  
§32.02. Hague Convention on the Civil Aspects of International Child Abduction  
§32.03. International enforcement outside the Hague Convention

**LAW REVIEWS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997). [Available at the Norwich Law Library].
- Robert J. Levy, *Memoir Of An Academic Lawyer: Hague Convention Theory Confronts Practice*, 29 FAMILY LAW QUARTERLY 171 (1995). [Available at the Norwich Law Library].
- Linda Silberman, *Hague Convention On International Child Abduction: A Brief Overview And Case Law Analysis*, 28 FAMILY LAW QUARTERLY 9 (1994). [Available at the Norwich Law Library].  
Special Issue on International Family Law.
- Carol S. Bruch, *The Central Authority's Role Under The Hague Child Abduction Convention: A Friend In Deed*, 28 FAMILY LAW QUARTERLY 35 (1994). [Available at the Norwich Law Library].  
Special Issue on International Family Law.
- Raymond R. Norko, *Mandatory Implementation Of The Hague Convention On International Child Abduction: An Open Letter To President William Clinton*, 8 CONNECTICUT JOURNAL OF INTERNATIONAL LAW 575 (1993).

**WEBSITES:**

- <http://www.hiltonhouse.com>
- [http://www.travel.state.gov/children's\\_issues.html](http://www.travel.state.gov/children's_issues.html)  
Maintained by the U.S. Department of State.

**COMPILER:**

Lawrence Cheeseman, Connecticut Judicial Branch Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#).

## Table 8 Requirements of the Hague Convention

Caro v. Sher, 687 A.2d 354, 356-357 (N.J. Super. Ch. 1996).

1. The nations involved must be signatories to the Convention
2. The children must be “habitual resident(s) in a Contracting State immediately before any breach of custody or access right.” (The Convention, art. 4)
3. The children must be under the age of sixteen. (The Convention, art. 4); and
4. The children’s removal or retention in a country other than their place of habitual residence must have been wrongful, <i>e.g.</i> “it is in breach of rights of custody attributed to a person . . . , either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.” (The Convention, art. 3(a)).

## Table 9 Affirmative Defenses to International Parental Kidnapping

18 U.S.C. §1204( c) 1-3	
1.	The defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;
2.	the defendant was fleeing an incidence or pattern of domestic violence;
3.	the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant’s control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

## Section 3.2

# Federal Parental Kidnapping Prevention Act (PKPA)

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to PKPA as it relates to Connecticut.
- SEE ALSO**
- [§ 1. Hague Convention on Civil Aspects of Child Abduction](#)
  - [§ 3. Interstate \(New law\).](#)
- DEFINITIONS:**
- **Purpose:** “deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitations awards.” P.L. 96-611 § 7(c)(7).
  - “Under the PKPA, a court of one state generally must enforce, and may not modify, a child custody determination of another state when the custody determination was made consistent with the provisions of the PKPA.” *Murphy v. Woerner*, 748 P.2d 749, 750 (Alaska 1988).
  - **Home state:** “means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for a least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six month or other period.” 28 USC §1738A(b)(4) (1999).
- STATUTES:**
- 28 USC § 1738A (2002), Full faith and credit given to child custody determinations.
- COURT CASES:**
- Connecticut**
- *Brown v. Brown*, 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). “Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a “custody determination.” We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a ‘custody determination.’” 28 U.S.C. § 1738A (b) (3).
- Unreported Connecticut Decisions**
- *Venditti v. Plonski*, No. FA01 0076354S (Conn. Super. Ct., Milford, Feb. 5, 2002), 2002 WL 241376. “Even though the facts may be unclear as to the defendant’s permanent intentions, this court does not need to find that Arizona is in fact the home state of the minor child. Using the significant connections test, it is clear that the child has more tied to Arizona and that

jurisdiction should reside in that state. The plaintiff will have full opportunity to contest custody and to present all evidence necessary for a thoughtful custody and visitation determination in that state. Therefore, the motion to dismiss is granted."

- Rowland v. Rowland, No. FA97 0057152S (Conn. Super. Ct., Milford, Aug. 19, 1999), 1999 WL 669794. "The language of the federal Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C. § 1738A must now be examined. That act requires the states to give full faith and credit to the custody decisions of other states that are consistent with federal law. The requirement, of course, is mandatory because of the Supremacy Clause of the federal constitution."

#### **Other States**

- Wilson v. Gouse, 441 S.E.2d 57, 59 (Ga. 1994). "As a preliminary matter, we find the PKPA applies in all interstate child custody disputes."
- Murphy v. Woerner, 748 P.2d 749, 750 (Alaska 1988). "To the extent that the PKPA and the UCCJA conflict, the PKPA preempts state law."

#### **WEST KEY NUMBERS:**

- *Parent and Child* #2(1). Custody and control of child. Nature and extent in general.
- *Parent and Child* #18. Enticing away Child
- *Kidnapping* #3. Person liable

#### **ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1999).  
Abduction or kidnapping by parent or person in loco parentis  
§34. Generally  
§35. Federal statutes; kidnapping statute  
§36. —Federal Kidnapping Prevention Act
- 59 AM. JUR. 2d *Parent and Child* (2002).  
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§32. Jurisdiction and venue  
§178. Other offenses
- 51 C.J.S. *Kidnapping* (1967).  
§3. Persons liable; defenses  
§4. —Kidnapping by parents, custodians, or their agent
- *Cause of action against noncustodial parent for interference with custody rights to child*, 5 COA 799 (1983).

#### **TEXTS & TREATISES:**

- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION LAW & PRACTICE* (2002).  
Chapter 3. Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): an overview  
§3.01[3]. Parental Kidnapping Prevention Act  
Chapter 4. Interstate child custody jurisdiction under UCCJA and PKPA  
§4.02[7]. Abductions  
§4.08. Child snatching; parental misconduct

#### **LAW REVIEWS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997). [Available at the Norwich Law Library].

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# Interstate (New Law)

*A Guide to Resources in the Law Library*

## **SCOPE:**

Bibliographic resources relating to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which was effective in Connecticut on July 1, 2000.

## **SEE ALSO:**

- [International](#)
- [Indian child](#)
- [Interstate \(prior law\)](#)

## **DEFINITIONS:**

- **Child custody determination:** "means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child.  
The term includes a permanent, temporary, initial and modification order. The term **does not include** an order relating to child support or other monetary obligation of an individual;" CONN. GEN. STAT. § 46b-115a(3) (2003). [emphasis added]
- **Home State:** "means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;" CONN. GEN. STAT. § 46b-115a(7) (2003).
- **Indian Child Welfare Act:** "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., is not subject to this act to the extent that it is governed by the Indian Child Welfare Act." CONN. GEN. STAT. § 46b-115c (2003).
- **Exclusive, continuing jurisdiction:** CONN. GEN. STAT. § 46b-115l (2003).
- **Jurisdiction to modify determination:** CONN. GEN. STAT. § 46b-115m (2003).
- **Taking testimony in another state.** CONN. GEN. STAT. § 46b-115i (2003).
- **Temporary Emergency Jurisdiction:** CONN. GEN. STAT. § 46b-115n (2003).

## **STATUTES:**

### **Connecticut**

- CONN. GEN. STAT. (2003).  
Chapter 815p. Uniform Child Custody Jurisdiction and Enforcement Act  
§§ 46b-115 et seq.  
Part I. General provisions  
Part II. Jurisdiction  
Part III. Enforcement (see [Table 3](#))  
Part IV. Foreign child custody

### **Uniform Law**

- 9 Part 1A UNIFORM LAWS ANNOTATED 655 (1999).  
Prefatory Note, pp. 649-654
- SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2000).

### Appendix 3-C

#### CASES:

- Lord v. Lord, No. CV01 038 02 79 (Conn. Super. Ct., Fairfield at Bridgeport, Aug. 20, 2002), 33 CONN. L. RPTR. 88, 90 (November 4, 2002), 2002 WL 31125621. “If parties could consent to jurisdiction in any forum, provisions of the UCCJEA itself would be meaningless. General Statutes § 46b-115k provides that ‘a court of this state has jurisdiction to make an initial child custody determination if’ certain facts are present. Notably, an agreement by the parties that a court shall have subject matter jurisdiction is not one of those factors. General Statutes § 46b-115l provides that ‘a court of this state which has made a child custody determination pursuant to sections 46b-115k to 46b-115m, inclusive, has exclusive, continuing jurisdiction over the determination until’ certain determinations are made by Connecticut or other state courts. Again, not included in this determination is whether the parties have agreed that a court shall take subject matter jurisdiction.”
- Crawford v. Calayag, No. FA01-034 44 98 S (Conn. Super. Ct., Danbury, March 22, 2002) 2002 WL 653241. “Connecticut is not the ‘home state’ of the minor child as that term is defined by § 46b-115a (7) of the Connecticut General Statutes.

Under the provisions of the UCCJEA, the court has exercised temporary jurisdiction in this matter and has entered the temporary emergency orders recited above in what it found to be the best interests of the minor child and to address the concerns raised by the plaintiff regarding alleged efforts by the defendant to deny the plaintiff access to his minor child.”

- Guillory v. Francks, FA 010065736S (Conn. Super. Ct., Windham at Willimantic, February 14, 2002), 2002 WL 442145. “From the record before this court the court concludes that the Florida court continues to exercise jurisdiction in the case . . . . This court is convinced, based upon the continuing activity in the Florida court, that Samantha's presence here in Connecticut is due to a temporary custody order in favor of the plaintiff and thus pursuant to § 46b-115(7) Florida remains the home state of Samantha.”
- Graham v. Graham, No. FA 92 65185 (Conn. Super. Ct., Middlesex at Middletown, Feb. 6, 2002), 2002 WL 241493. “Under the UCCJEA, jurisdiction largely depends on the status of the involved individuals on the date of the commencement of the proceeding. Jurisdiction attaches at the commencement of a proceeding. C.G.S. § 46b-115a (5).”
- Gilman v. Gilman, No. 0121957S (Conn. Super. Ct., New London at Norwich, May 22, 2001), 2001 WL 688610. “The new act represents a marked difference from what had been Connecticut General Statute § 46b-93. Under the former statute, a court of this state could exercise jurisdiction if this state was the home state of the child at the time the proceeding was commenced or it was in the best interest of the child that the court exercise jurisdiction because the child and his parents had a significant connection to the state. The UCCJEA alters the analysis of the initial determination of child custody. Specifically, the new act requires that the ‘home state’ determination be made as a condition precedent to an examination as to whether the child and parent have significant connections with this state. The new act also eliminates that analysis on the basis of ‘the best interest of the child.’”
- Anselmo v. Anselmo, No. FA000181708 (Conn. Super. Ct., Stamford, March 28, 2001), 2001 WL 358851. “. . . the question becomes on what basis can this court, or any court for that matter, accept jurisdiction regarding custody of an unborn infant.”

- Heath v. Heath, No. FA91 0117282 S (Conn. Super. Ct., Norwalk at Stamford, Nov. 16, 2000), 2000 WL 1838932. “Jurisdiction is found in Section 13 of the act since this state has made an initial child custody determination and has exclusive, continuing jurisdiction over the determination until (1) neither parent nor the child reside in this state or (2) that this state is not the home state of the child, and that although one parent continues to reside in this state the child no longer has a significant relationship with such parent and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships. The facts in this case are that the father does reside in this state and no evidence has been introduced to show that he no longer has a significant relationship with the boy. Connecticut has the jurisdiction to act in the matter.”

## **ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§ 34. Generally  
§ 35. Federal statutes; kidnapping statute  
§ 36. —Federal Kidnapping Prevention Act  
§ 37. Uniform Child Custody Jurisdiction Act
- 51 C.J.S. *Kidnapping* (1967).  
§ 3. Persons liable; defenses  
§ 4. —Kidnapping by parents, custodians, or their agent
- 59 AM. JUR. 2d *Parent and Child* (2002).  
§ 123. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§ 130. Action by parent for enticing away child or other interference with relationship  
§ 131. — Nature and elements of cause of action  
§ 132. — Form of action and proper parent to sue  
§ 133. — Defenses  
§ 134. — Pleading and evidence  
§ 135. — Trial and recovery for damages
- David Carl Minneman, Annotation, *Construction And Operation Of Uniform Child Custody Jurisdiction And Enforcement Act*, 100 ALR5th 1 (2002).
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

## **TEXTS & TREATISES:**

- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION* (2002).  
Chapter 3 Impact of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA): An Overview  
§ 3.01[2]. Evolutionary developments—UCCJEA  
§3.01[4][b]. Interstate overview—UCCJEA  
§3.01[6][b]. Applicability—UCCJEA  
§3.02[2]. Objectives—UCCJEA  
§3.02A[2]. Jurisdiction to decide this dispute—UCCJEA  
§3.02B[2]. Enforcement provisions in UCCJEA  
[b]. Duty to enforce foreign-state orders  
[c]. Enforcement under Hague Convention  
§3.02C. Extraordinary enforcement under UCCJEA; warrant for

physical custody—UCCJEA  
§3.04[2]. Due process requirements—UCCJEA  
§3.05[2]. Pleadings and testimony—UCCJEA  
§3.06[2]. Joinder of additional parties; appearances—UCCJEA  
§3.07[2]. Cooperation between courts—UCCJEA

**LAW REVIEWS:**

- Patricia M. Hoff, *The ABC's Of The UCCJEA: Interstate Custody Practice Under The New Act*, 32 FAM. L.Q. 267 (1998). [Available at the Norwich Law Library].

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**Table 10 Enforcement under UCCJEA**

<b>Enforcement under UCCJEA</b> CONN. GEN. STAT. (2003)	
§ 46b-115gg	Appeals
§ 46b-115ee	Costs, fees and expenses
§ 46b-115x	Enforcement of child custody determinations
§ 46b-115v	Enforcement under Hague Convention
§ 46b-115aa	Expedited enforcement of child custody determination
§ 46b-115cc	Hearing and order
§ 46b-115dd	Order to take physical custody of child
§ 46b-115ff	Recognition and enforcement of order issued by another state
§ 46b-115w	Registration of child-custody determination
§ 46b-115bb	Service of petition and order
§ 46b-115y	Temporary visitation order

# Section 3.3a

## Interstate

### (Prior to July 1, 2000)

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the Connecticut Uniform Child Custody Jurisdiction Act (UCCJA) which was repealed eff. July 1, 2000.
- SEE ALSO:**
- [Current law](#)
- DEFINITIONS:**
- HOME STATE: “means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of such persons. periods of temporary absence of any of the named persons are counted as part of the six-month or other period;” CONN. GEN. STATS. §46B-92(6) (1999).
- STATUTES:**
- CONN. GEN. STATS. §§ 46b-90 to 46b-114 (1999). Uniform Child Custody Jurisdiction Act. [repealed effective July 1, 2000].
- COURT CASES:**
- Muller v. Muller, 43 Conn. App. 327, 333, 682 A.2d 1089 (1996). “Here, of course, there is no such danger [parental resort to kidnapping to gain a more favorable judgment in a new forum] because the plaintiff has lived in California with the minor child since giving birth to him nearly seven years ago. The child has never lived in Connecticut.”
  - Grynkewich v. McGinley, 3 Conn. App. 541, 545-546, 490 A.2d 534 (1985). “In order to bring about a measure of interstate stability in custody awards, the UCCJA ‘limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family.’ Unif. Child Custody Jurisdiction Act, Commissioners’ Prefatory Note, 9 U.L.A. 114(1979).”
  - Goldstein v. Fischer, 200 Conn. 197, 201, 510 A.2d 184 (1986). “General Statutes § 46b-93(a)(1) is inapplicable because this state is not and never has been the ‘home state’ of the child . . . . The child in this case was less than five months old when she left Connecticut, and because she was born in West Germany.”
- ENCYCLOPEDIAS**
- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).
    - Abduction or kidnapping by parent or person in loco parentis
    - §34. Generally
    - §35. Federal statutes; kidnapping statute
    - §36. —Federal Kidnapping Prevention Act
    - §37. Uniform Child Custody Jurisdiction Act
  - 51 C.J.S. *Kidnapping* (1967).
    - §3. Persons liable; defenses

- §4. —Kidnapping by parents, custodians, or their agent
- 59 AM. JUR. 2d *Parent and Child* (1987).
  - § 93. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).
  - § 130. Action by parent for enticing away child or other interference with relationship
  - § 131. — Nature and elements of cause of action
  - § 132. — Form of action and proper parent to sue
  - § 133. — Defenses
  - § 134. — Pleading and evidence
  - § 135. — Trial and recovery for damages
- David Carl Minneman, Annotation, *Significant Connection Jurisdiction Of Court To Modify Foreign Child Custody Decree Under §§ 3(a)(2) And 14(b) Of The Uniform Child Custody Jurisdiction Act (UCCJA) And The Parental Kidnapping Prevention Act (PKPA)*, 28 USC §§ 1738A(c)(2)(b) And 1738A(f)(1), 67 ALR5th 1 (1999).
- Annotation, *Pending Proceeding In Another State As Ground For Declining Jurisdiction Under §7 Of The Uniform Child Custody Jurisdiction Act (UCCJA)*, 20 ALR 5th 700 (1994).
- David Carl Minneman, Annotation, *Parties' Misconduct As Ground For Declining Jurisdiction Under § 8 Of The Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 ALR 5th 650 (1993).
- David Carl Minneman, Annotation, *Home State Jurisdiction Of Court Under § 3(a)(1) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(c)(2)(A), 6 ALR 5th 1 (1992).
- David Carl Minneman, Annotation, *Significant Connection Jurisdiction Of Court Under § 3(A)(2) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(D), 5 ALR5th 550 (1992).
- David Carl Minneman, Annotation, *Abandonment And Emergency Jurisdiction Of Court Under § 3(A)(3) Of The Uniform Child Custody Jurisdiction Act(UCCJA) Or Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(C), 5 ALR5th 788 (1992).
- David Carl Minneman, Annotation, *Default Jurisdiction Of Court Under § 3(A)(4) Of The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A(C)(2)(D), 6 ALR 5th 69 (1992).
- Annotation, *Child Custody: When Does State That Issued Previous Custody Determination Have Continuing Jurisdiction Under Uniform Child Custody Jurisdiction Act (UCCJA) Or Parental Kidnapping Prevention Act (PKPA)*, 28 USC § 1738A, 83 ALR 4th 742 (1991).
- Danny R. Veilleux, Annotation, *Applicability Of Uniform Child Custody Act (UCCJA) To Temporary Custody Orders*, 81 ALR4th 1101 (1990).
- Danny R. Veilleux, Annotation, *What Types Of Proceedings Or Determinations Are Governed By The Uniform Child Custody Jurisdiction Act (UCCJA) Or The Parental Kidnapping Prevention Act (PKPA)*, 78 ALR4th 1028 (1990).
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

**TEXTS &  
TREATISES:**

- SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).  
Chapter 4. Interstate child custody jurisdiction under UCCJA and PKPA  
§ 4.08 Child Snatching; parental misconduct  
Chapter 5. Recognition, enforcement and modification under UCCJA and  
PKPA: comity and full faith and credit  
§ 5.07 Tort Remedy for Child Snatching

**JOURNALS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).  
[Available at the Norwich Law Library].

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# Within Connecticut

*A Guide to Resources in the Law Library*

## **SCOPE:**

Bibliographic resources relating to the civil and criminal aspects of parental child abduction within the State of Connecticut after July 1, 2000.

## **DEFINITIONS:**

- **Conspiracy to interfere with custodial relations:** "The requisites of a civil action for conspiracy are: (1) a combination between two or more persons, (2) to do a criminal or an unlawful act or a lawful act by criminal or unlawful means, (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object, (4) which act results in damage to the plaintiff." *Williams v. Maislen*, 116 Conn. 433, 437, 165 A. 455 (1933).
- **"Custodial interference in the first degree:** Class D felony. (a) A person is guilty of custodial interference in the first degree when he commits custodial interference in the second degree as provided in section 53a-98: (1) Under circumstances which expose the child or person taken or enticed from lawful custody or the child held after a request by the lawful custodian for his return to a risk that his safety will be endangered or his health materially impaired; or (2) by taking, enticing or detaining the child or person out of this state." CONN. GEN. STAT. § 53a-97 (2003).
- **"Custodial interference in the second degree:** Class A misdemeanor. (a) A person is guilty of custodial interference in the second degree when: (1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; (2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so, he holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child." CONN. GEN. STAT. § 53a-98 (2003).
- **Effects of Joint Custody:** "We were wrong to conclude that a joint custodian could never, under any scenario, be liable for custodial interference." *State v. Vakilzaden*, 251 Conn. 656, 664, 742 A.2d 767 (1999).

## **STATUTES:**

- CONN. GEN. STAT. (2003)
  - § 53a-97. Custodial interference in the first degree
  - § 53a-98. Custodial interference in the second degree

## **LEGISLATIVE:**

- George Coppolo, *Custodial interference*, Connecticut General Assembly. Office of Legislative Research Report No. 98-R-1142 (February 4, 1998).  
<http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0192.doc>

## **COURT CASES:**

- *Streeter v. Bruderhof Communities in New York, Inc.*, No. X01 CV-02-0179481-S (Conn. Super. Ct., Waterbury, Complex Litigation, Nov. 3, 2003), 36 CONN. L. RPTR. 69 (January 12, 2004).  
 "This action concerns the claimed abduction of the plaintiff's two (2)

minor children by the children's father, the plaintiff's ex-husband The claim is that he, with the assistance of the other named defendants, removed the children from the United States to Egypt via Ireland The other named defendants are the owner and/or carrier for the international flight, a global aviation and manufacturing business, and a private airline charter service. The mother and the father share joint legal custody; the plaintiff mother has physical custody.

The complaint asserts four (4) causes of action: 1) Interference with Custodial Relations; 2) Negligence; 3) False Imprisonment; and 4) Emotional Distress.”

- State v. Vakilzaden, 251 Conn. 656, 742 A.2d 767 (1999). “. . . a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent beyond a reasonable doubt.”
- Zamstein v. Marvasti, 240 Conn. 549, 566, 692 A.2d 781 (1997). "The plaintiff in the present case has failed to allege sufficient facts to state a cause of action for the tort of child abduction or custodial interference, as defined in Marshak v. Marshak, [below] . . . because the plaintiff did not allege any facts suggesting an unlawful custody of his children."
- Marshak v. Marshak, 226 Conn. 652, 665-666, 628 A.2d 964 (1993). "We disagree with the trial court's conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort. In order to impose liability on a third party for conspiring with or aiding another in the removal of children from the custodial parent, the third party must have conspired with, or aided the other, 'to do a criminal or an unlawful act or a lawful act by criminal or unlawful means' . . . In this case, however, civil liability was predicated on acts that were not themselves unlawful when they occurred because on August 7, 1985, the date on which the defendant drove the children and their father to New York, the father still had joint legal custody of the children."
- Brown v. Brown, 195 Conn. 98, 119-120, 486 A.2d 1116 (1985). "Geared as the PKPA is toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions, the application of the PKPA to this case initially turns on the definition of a "custody determination." We believe that the orders of the Florida court which, in effect, generated this Connecticut action, fall squarely within the PKPA definition of a 'custody determination.'" 28 U.S.C. § 1738A (b) (3)
- Agnello v. Becker, 184 Conn. 421, 432-433, 440 A.2d 172 (1981). "The defendant also claims that the 'reprehensible conduct' of the plaintiff, in taking the child from the home of the defendant and allegedly 'concealing' her from the defendant, supports the trial court's conclusion that the New Jersey decree should not be recognized . . . . We initially note that this provision [Conn. Gen. Stats. §46b-98(a) and N.J. Stat. Ann. §2A:34-36(a)] does not set forth any new bases for jurisdiction. Secondly, under this section, the determination of whether the plaintiff's conduct was reprehensible was more properly a question for the New Jersey court. Thirdly, we point out that the act does not *require* a state to decline to exercise its jurisdiction over the matter for such conduct."

**WEST KEY  
NUMBERS:**

- *Infants* #18. Custody and protection. Jurisdiction of the court
- *Parent and Child* #2(5). Custody and control of child. Proceedings to determine right. Jurisdiction; venue

**DIGESTS:**

- CONNECTICUT FAMILY LAW CITATIONS: *Child Abduction*

**ENCYCLOPEDIAS**

- 1 AM. JUR. 2d *Abduction and Kidnapping* (1994).  
Abduction or kidnapping by parent or person in loco parentis  
§34. Generally
- 51 C.J.S. *Kidnapping* (1967).  
§3. Persons liable; defenses  
§4. —Kidnapping by parents, custodians, or their agent
- 59 AM. JUR. 2d *Parent and Child* (1987).  
§ 93. Enticement or abduction of child; interference with custody
- 67A C.J.S. *Parent and Child* (1978).  
§ 130. Action by parent for enticing away child or other interference with relationship  
§ 131. — Nature and elements of cause of action  
§ 132. — Form of action and proper parent to sue  
§ 133. — Defenses  
§ 134. — Pleading and evidence  
§ 135. — Trial and recovery for damages
- William B. Johnson, Annotation, *Liability Of Legal Or Natural Parent, Or One Who Aids And Abets, For Damages Resulting From Abduction Of Own Child*, 49 ALR4th 7 (1986).
- William B. Johnson, Annotation, *Kidnapping Or Related Offense By Taking Or Removing Child By Or Under Authority Of Parent Or One In Loco Parentis*, 20 ALR 4th 823 (1983).

**TEXTS &  
TREATISES:**

- DANIEL C. POPE, CONNECTICUT ACTIONS AND REMEDIES: TORT LAW 2 (1996).  
Chapter 40. Conspiracy
- AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW OF TORTS 2D (1977).  
§ 700. Causing minor child to leave home or not return to home

**LAW REVIEWS:**

- Patricia M. Hoff et al. *Jurisdiction In Child Custody And Abduction Cases: A Judge's Guide To The UCCJA, PKPA, And The Hague Abduction Convention*, 48 JUVENILE & FAMILY COURT JOURNAL CH1 (185) (1997).  
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**Table 11 Tort of child abduction or custodial interference**

<h2 style="text-align: center;">Tort of Child Abduction or Custodial Interference</h2>	
<p><u>Bouchard v. Sundberg</u>, 80 Conn. App. 180, 198-199, 834 A.2d 744 (2003).</p>	<p>In <i>Vakilzaden</i> [infra], the Supreme Court considered for the first time whether the tort of child abduction or custodial interference applied to a parent who had joint custody of the subject child . . . That case did not, as the plaintiff argues, abrogate the requirement of an extralegal taking of custody for the tort of custodial interference. The Supreme Court expressly decided that a parent enjoying joint custody could be liable for the crime of custodial interference and, in that respect, overruled <i>Marshak</i> [infra].”</p>
<p><u>State v. Vakilzaden</u>, 251 Conn. 656, 662-663, 742 A.2d 767 (1999).</p>	<p>“The state argues that we should overrule <i>Marshak</i> [infra] and allow joint custodians to be held criminally liable if, in abducting their own child, their intent is to deprive the other joint custodian of his or her equal parental rights permanently or for a protracted period of time in accordance with General Statutes § 53a-98. We agree that <i>Marshak</i> should be overruled and that a joint custodian is not inherently immune from criminal prosecution based solely on his or her status as joint custodian if the state can prove all elements of the custodial interference statute, including both knowledge and intent, beyond a reasonable doubt.”</p>
<p><u>Zamstein v. Marvasti</u>, 240 Conn. 549, 565, 692 A.2d 781 (1997)</p>	<p>“Although we have recognized that the <b>tort of child abduction or custodial interference</b> may have a place in our jurisprudence; see <i>Marshak v. Marshak</i>, 226 Conn. 652, 665, 628 A.2d 964 (1993); we conclude that the plaintiff has failed to allege sufficient facts to state such a cause of action.” (emphasis added)</p>
<p><u>Marshak v. Marshak</u>, 226 Conn. 652, 665, 628 A.2d 964 (1993).</p>	<p>We agree with the trial court that the recognition of <b>the tort of child abduction or custodial interference</b>, as applied to either a parent or a third party, might well play an important role in encouraging the speedy return of abducted children to the custodial parent and in compensating that parent for the harm suffered from the child's absence. We also agree that such a tort may have a place in our jurisprudence. We disagree with the trial court's conclusion, however, that, under the circumstances of this case, the defendant was liable for such a tort.” (Emphasis added).</p>
<p>Restatements</p>	<p>RESTATEMENT(SECOND) OF TORTS § 700 (1989). Causing minor child to leave or not return home.</p>

# Section 3.5

## Indian Child Welfare Act (ICWA)

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the federal Indian Child Welfare Act (ICWA) and parental kidnapping of an Indian child.

### **DEFINITIONS:**

- **Indian child:** "means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. §1903(4) (2002).
- **Indian tribe:** "means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians . . . ." 25 U.S.C. §1903(8)(2002).
- **Exclusive jurisdiction:** "An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child." 25 U.S.C. §1911 (2002).

### **STATUTES:**

- Indian Child Welfare Act, 25 U.S.C. §§ 1901 et seq. (2002).
  - § 1920. "Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger."
  - § 1921. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal Court shall apply the State or Federal standard.
  - §1922. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent immediate physical damage or harm to the child. The State authority, official, or agency

involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or to restore the child to the parent or Indian custodian, as may be appropriate.

- CONN. GEN. STAT. § 46b-115c (2003). "A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act."

#### **LEGISLATIVE HISTORY:**

- H.R.Rep. No. 1386, 95<sup>th</sup> Cong., 2d Sess. 25 (1978). Reprinted in 1978 U.S.C.C.A.N. 7530, 7548.  
"Section 110 [25 U.S.C. § 1920] establishes a 'clean hands' doctrine with respect to petitions in State courts for the custody of an Indian child by a person who improperly has such child in physical custody. It is aimed at those persons who improperly secure or improperly retain custody of the child without the consent of the parent or Indian custodian and without the sanction of law. It is intended to bar such person from taking advantage of their wrongful conduct in a subsequent petition for custody. The child is to be returned to the parent or Indian custodian by the court unless such return would result in substantial and immediate physical damage or threat of physical danger to the child. It is not intended that any such showing be by or on behalf of the wrongful petitioner."

#### **REGULATIONS:**

- 25 C.F.R. Part 23 (2003). Indian Child Welfare Act
- Bureau of Indian Affairs, *Guidelines for State Courts; Indian Child Custody Proceedings*, 44 Fed. Reg. 67584 (November 26, 1979). Reprinted in SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2000), Appendix 29B.  
B.8. Improper removal from custody [44 Fed. Reg. 67590]

#### **COURT CASES:**

- *D.E.D. v. State*, 704 P.2d 774, 780 (Alaska 1985). "Thus, as the State's notes, there was nothing in R.S.'s petition which demonstrated that there was any basis for declining jurisdiction under either § 1913 or § 1920."

#### **WEST KEY NUMBERS:**

- *Indians* #6. Protection of persons and personal rights
- *Indians* #27(2). Actions. Jurisdiction

#### **DIGESTS:**

- ALR DIGEST: *Indians* #1

#### **ENCYCLOPEDIAS**

- 41 AM JUR 2d *Indians* §§ 144-153 (1995).  
§ 145. Generally; tribal jurisdiction
- 42 C.J.S. *Indians* §§ 137-153 (1991).
- 19 FEDERAL PROCEDURE LAWYERS EDITION, *Indians and Indian Affairs* §§ 46:469 - 488 (2000). Child custody proceedings under Indian Child Welfare Act  
§ 46:472. State court's declining jurisdiction upon improper removal of child from custody

#### **TEXTS & TREATISES:**

- SANDRA MORGAN LITTLE, 4 CHILD CUSTODY AND VISITATION (2002). Chapter 29. The Indian Child Welfare Act and Laws Affecting Indian Juveniles.

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# Torts of Minors in Connecticut

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**Tort:** "Breach of a statutory duty or one imposed by case law, and not by a contract, is a tort." A & S Council Oil Co., Inc. v. Saiki, 799 F. Supp. 1221, 1230 (D.D.C. 1992).

"A tort is defined to be a wrong independent of contract . . . ." Ross v. Schade, 7 Conn. Supp. 521 (1940).

"A breach of contract may be described as a material failure of performance of a duty arising under or imposed by an agreement, while a tort is a violation of a duty imposed by law, a wrong independent of contract." Wolf v. U.S., 855 F. Supp. 337, 340 (D. Kan. 1994).

**Elements of a tort:** "In general, the tort must be in the breach of a legal duty comprising three distinct elements, to-wit: (a) Existence of legal duty from defendant to plaintiff; (b) breach of that duty; and (c) the damage as a proximate result." Laclede Steel Co. v. Silas Mason Co., 67 F. Supp. 751, 759 (D. Louisiana, 1946).

"Under General Statute § 52-217, in actions for recovery of damages for injury to person or property, a minor under sixteen is entitled to have the trier of fact determine whether his violation of a statutory duty was negligence, while one sixteen years of age or older is subject to the general rule that the violation of an applicable statute is negligence per se." Moore v. Bunk, 154 Conn. 644, 648, 228 A.2d 510 (1967).

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# Tort Liability of Minors

*A Guide to Resources in the Law Library*

## **SCOPE:**

Bibliographic resources relating to tort liability of minors under Connecticut law.

## **DEFINITIONS:**

- **Exercise of due care:** "In all actions for recovery of damages for injury to person or property, in which the plaintiff or defendant was a minor under sixteen years of age at the time such cause of action arose, it shall be a question of fact to be submitted to the judge or jury to determine whether or not such minor plaintiff or minor defendant was in the exercise of due care, when there is a violation of statutory duty by such plaintiff or defendant." [Conn. Gen. Stats. § 52-217 \(2003\)](#).
- **Child of tender years:** "is not required to conform to the standard of behavior which is reasonable to expect of an adult, but his conduct is to be judged by the standard of behavior to be expected from a child of like age, intelligence and experience. A child may be so young as to be manifestly incapable of exercising any of those qualities of attention, intelligence and judgment which are necessary to enable him to perceive a risk and to realize its unreasonable character. On the other hand, it is obvious that a child who has not yet attained his majority may be as capable as an adult. The standard of conduct of such a child is that which is reasonable to expect of children of like age, intelligence and experience.  
In so far as the child's capacity to realize the existence of a risk is concerned, the individual qualities of the child are taken into account. *Lutteman v. Martin*, 20 Conn. Sup. 371, 374-75, 135 A.2d 600 (1957).

## **STATUTES:**

- CONN. GEN. STATS. (2003).  
Chapter 435. Dogs and other companion animals  
[§ 22-357. Damage to person or property](#)  
Chapter 900. Court practice and procedure  
[§ 52-217. Violation of statute by minor](#)

## **FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[FORM 804.9. Action against minor and parents for injury to another minor](#)
- 14 AM JUR PL & PR FORMS *Infants* (1996 Rev.).  
Torts §§ 191-222  
§ 201. Complaint, petition, or declaration—Against infant—  
Fraudulent misrepresentation of age inducing contract  
§ 202. Complaint, petition, or declaration—Against infant and  
parent—Negligent entrustment of weapon  
§ 203. . Complaint, petition, or declaration—Against infant and  
parent—Negligent entrustment of weapon—Alternate form

## **JURY**

- DOUGLASS B. WRIGHT AND WILLIAM L. ANKERMAN, CONNECTICUT JURY

## INSTRUCTIONS:

INSTRUCTIONS (CIVIL) (4<sup>th</sup> ed. 1993).

- § 130. Care required of child
- § 131. Contributory negligence of a child
- § 132. Violation of statute by child
- § 134a. Concurrent negligence of parent
- § 179. Contributory negligence—Child
- 14 AM JUR PL & PR FORMS *Infants* (1996 Rev.).
  - § 207. Instruction to jury—Standard of care required of infant
  - § 208. Instruction to jury—Standard of care required of infant—Alternate form
  - § 209. Instruction to jury—Standard of care required of infant—Personal injury case
  - § 210. Instruction to jury—Standard of care required of infant—Conclusive presumption against contributory negligence of child of very tender years
  - § 213. Instruction to jury—Misrepresentation of age constituting fraud

## CASES:

- Ulitsch v. Pinamang, No. CV93-0527442-S, (Feb. 4, 1998), 1998 WL 61918. "In ordinary negligence, including the operation of a motor vehicle, the standard of care of a minor is measured by the standard of conduct which will vary according to his age, judgment and experience . . . . However in statutory negligence, where a violation of the statute is negligence per se, such negligence applies to minors of the age of sixteen or over pursuant to G.S. 52-217."
- Gangemi v. Beardsworth, No. CV95 32 13 78 S (Dec. 13, 1995), 1995 WL 781424. "The defendants contend the count is deficient because Rebecca Gangemi has failed to allege that at the time of the injury the child was not teasing, tormenting, or abusing the defendants' dog. Section 22-357 creates a presumption that a child under seven years of age was not abusing the dog: "If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof shall be upon the defendant in such action." Since Rebecca Gangemi has alleged that the child was six years old at the time of the incident, she need not allege any additional facts regarding the child's conduct with respect to the dog."
- Moore v. Bunk, 154 Conn. 644, 648, 228 A.2d 510 (1967). "Under General Statute § 52-217, in actions for recovery of damages for injury to person or property, a minor under sixteen is entitled to have the trier of fact determine whether his violation of a statutory duty was negligence, while one sixteen years of age or older is subject to the general rule that the violation of an applicable statute is negligence per se."
- Santor v. Balnis, 151 Conn. 434, 436, 199 A.2d 2 (1964). "Even though the boy may have violated his statutory duty to give a signal of his intention to make a left turn, that violation would not be negligence per se in the case of a minor under sixteen years of age, as it would be in the case of an adult. General Statutes 52-217. The boy was entitled to have the jury measure his conduct by that reasonably to be expected of children of similar age, judgment and experience."
- Overlock v. Ruedemann, 147 Conn. 649, 654, 165 A.2d 335 (1960). "A minor is liable for injuries negligently inflicted by him upon another . . . . It is true that in determining the negligence of a minor the law applies to him a standard of conduct which will vary according to his age, judgment and experience, but the law does not grant him a complete immunity from

liability for his torts, even in negligence. General Statutes 52-217; Rappa v. Connecticut Co., 96 Conn. 285, 286, 114 A. 81; Colligan v. Reilly, 129 Conn. 26, 29, 26 A.2d 231; Magaraci v. Santa Marie, 130 Conn. 323, 330, 33 A.2d 424."

- Lutteman v. Martin, 20 Conn. Sup. 371, 375, 135 A.2d 600 (1957). "If the child is of sufficient age, intelligence and experience to realize the harmful potentialities of a given situation, he is required to exercise such prudence in caring for himself and such consideration for the safety of others as is common to children of like age, intelligence and experience."

**WEST KEY  
NUMBER:**

- *Infants*  
Torts # 59-64  
# 59. Liability in general  
# 60. Wilful injuries  
# 61. Negligence  
# 62. False representation  
# 63. Acts continued after majority  
# 64. Damages

**DIGESTS:**

- ALR DIGEST: *Infants*  
Capacities, disabilities, and liabilities, §§ 34-42  
Torts, §§ 37-42

**ENCYCLOPEDIAS:**

- 42 AM JUR 2d *Infants* (2000).  
Liability for torts §§ 127-148  
§§ 127-130. In general  
§§ 131-142. Negligence; standard of care  
§§ 143-148. Torts connected with contracts
- 59 AM JUR 2d *Parent & Child* (2002).  
§ 105. Offenses of child against parents
- 43 C.J.S. *Infants* (1978).  
Torts, §§ 189-195  
§ 189. Liability of infant in general  
§ 190. Malicious or intentional injuries  
§ 191. Torts connected with contracts  
§ 192. Fraud and false representations  
§ 193. Negligence  
§ 194. \_\_\_\_\_. Operation of motor vehicle  
§ 195. Damages

**ALR Annotations**

- Donald Paul Duffala, Annotation, *Modern Trends As To Contributory Negligence Of Children*, 32 ALR4th 56 (1984).
- Donald Paul Duffala, Annotation, *Modern Trends As To Tort Liability Of Child Of Tender Years*, 27 ALR4th 15 (1984).
- Wade R. Habeeb, Annotation, *Weapons: Application Of Adult Standard Of Care To Infant Handling Firearms*, 47 ALR3d 620 (1973).
- A.D. Kaufman, Annotation, *Infant's Misrepresentation As To His Age As Estopping Him From Disaffirming His Voidable Transaction*, 29 ALR3d 1270 (1970).

**Poof of Facts**

- *Negligence of bicyclist*, 12 POF3d 247 (1991).
- *Motor Vehicle Accidents—Contributory negligence by bicyclist*, 11 POF3d

503 (1991).

**TEXTS &  
TREATISES:**

- DOUGLASS B. WRIGHT ET AL., CONNECTICUT LAW OF TORTS (3rd ed. 1991).
  - § 73. Liability of infant in tort
  - § 74. Standard of care for a child
  - § 75. Actions by or against a child
- JOEL M. KAYE ET AL., 3A CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED (1996).
  - Authors' comments following Form 804.9, pp. 47-50.
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
  - Chapter 5. Minors
    - § 5.1. Tort liabilities of minors
      - (a). Intent and standard of care
      - (b). Conn. Gen. Stat. § 52-217
      - (c). Compared with adult conduct
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (1994).
  - Chapter 9. Children and the law of torts
    - Torts committed by children, §§ 9.01 - 9.04
      - § 9.01. Intentional torts
      - § 9.02. Negligence actions involving children
      - § 9.03. —Adult standards applied to children

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**Table 12 Damage to Person or Property**

## **Conn. Gen. Stats. § 22-357 (2003)**

If any dog does any damage to either the body or property of any person, the owner or keeper, or, if the owner or keeper is a minor, the parent or guardian of such minor, shall be liable for such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof thereof shall be upon the defendant in such action.

**Table 13 Violation of Statute by Minor**

## **Conn. Gen. Stats. § 52-217 (2003)**

In all actions for recovery of damages for injury to person or property, in which the plaintiff or defendant was a minor under sixteen years of age at the time such cause of action arose, it shall be a question of fact to be submitted to the judge or jury to determine whether or not such minor plaintiff or minor defendant was in the exercise of due care, when there is a violation of statutory duty by such plaintiff or defendant.

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**Figure 3 Action against Minor and Parents for Injury to Another Minor****FIRST COUNT – ASSAULT**

1. The plaintiff (*name*), hereinafter referred to as the minor plaintiff, is a minor, and brings this action by the plaintiff (*name*), hereinafter referred to as the plaintiff father, his parent and next friend.

2. The defendant (*name*), hereinafter referred to as the minor defendant, is a minor, and the defendant (*name of father*), and the defendant (*name of mother*), hereinafter referred to as the defendant parents, are the parents of the minor defendant.

3. On or about (*date and time*) the minor plaintiff, (*number*) years of age, was a lawful pedestrian on (*location-street, town, etc.*).

4. At that time and place, the minor defendant assaulted and beat the minor plaintiff, thereby causing the minor plaintiff to sustain and suffer personal injuries and losses.

5. The assault was willful, wanton and malicious.

6. (*State injuries*).

**SECOND COUNT – NEGLIGENCE**

1. Paragraphs 1 - 3 inclusive of the First Count are made paragraphs 1- 3 inclusive of the Second Count.

4. At that time and place, the minor defendant negligently and carelessly caused the plaintiff to be struck in the right eye, resulting in the severe personal injuries and losses hereinafter set forth.

5. Paragraph 6 of the First Count is hereby made paragraph 5 of this count.

**THIRD COUNT - AGAINST PARENTS**

1. Paragraphs 1 - 6 inclusive of the First Count are made paragraphs 1 - 6 inclusive of the Third Count.

7. At all times herein mentioned the defendant parents were the parents and natural guardians of the minor defendant, and the minor defendant was a member of his parents' household when the minor defendant wilfully, wantonly and maliciously caused the severe personal injuries and losses of the minor plaintiff as herein set forth.

8. The minor plaintiff's injuries and losses were caused by the carelessness and negligence of the defendant parents, in one or more of the following ways:

a. In that they failed to exercise reasonable care in controlling their minor child so as to prevent him from harming the plaintiff;

b. in that the defendant parents negligently and carelessly failed to restrain their minor son, although they knew or should have known that the minor possessed a violent temper and had a propensity for violence.

9. At all times herein mentioned, the minor defendant was an unemancipated, minor and the injuries described herein were caused by the wilful or malicious acts of the minor defendant, and claim is made against the defendant parents and natural guardians of the minor defendant pursuant to the provisions of Section 52-572 of the General Statutes.

**FOURTH COUNT - PLAINTIFF FATHER AND ALL DEFENDANTS**

1. Paragraphs 1 - 9 inclusive of the Third Count are made paragraphs 1- 9 inclusive of this Fourth Count.

10. At all times herein mentioned the plaintiff father was the father and natural guardian of the minor plaintiff.

11. As a further result of the wilful, wanton, and malicious conduct of the minor defendant, the plaintiff father was forced to expend the sum of \$        for x-rays, medicines and medical care on behalf of his minor son, and will be forced to expend further sums for the same in the future.

The minor plaintiff claims damages of the minor defendant.  
The minor plaintiff claims damages of the defendant parents.  
The plaintiff father claims damages of all defendants.

## Section 4.2

# Parental Liability for Torts of Minors

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to parents' liability under Connecticut law for injuries or damages inflicted by their unemancipated children

### **DEFINITIONS:**

- **Parental liability for torts of minors:**
  - (a) The parent or parents or guardian, other than a temporary guardian appointed pursuant to section 45a-622, of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.
  - (b) This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.
  - (c) The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.
  - (d) As used in this section, "damage" shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof. CONN. GEN. STATS. § 52-572(2003).
- **Wilful and malicious injury:** "is one inflicted intentionally without just cause or excuse. It does not necessarily involve the ill will or malevolence shown in express malice. Nor is it sufficient to constitute such an injury that the act resulting in the injury was intentional in the sense that it was the voluntary action of the person involved. Not only the action producing the injury but the resulting injury must be intentional. "A wilful or malicious injury is one caused by design. Wilfulness and malice alike import intent. . . . [Its] characteristic element is the design to injure, either actually entertained or to be implied from the conduct and circumstances." *Sharkey v. Skilton*, 83 Conn. 503, 507, 77 A. 950; *Simenaukas v. Connecticut Co.*, 102 Conn. 676, 129 A. 790; 20 R. C. L. p. 21." *Rogers v. Doody*, 119 Conn. 532, 534, 178 A. 51 (1935).

### **STATUTES:**

- CONN. GEN. STATS. (2003).
  - Chapter 1. Construction of statutes
    - § 1-1d. "Minor," "Infant," "Infancy," "Age Of Majority," defined.
  - Chapter 435. Dogs and other companion animals
    - [§ 22-357. Damage to person or property](#)
  - Chapter 815t. Juvenile matters
    - § 46b-150d. Emancipation of minor, effect on parental liability

Chapter 925. Statutory rights of action and defenses  
[§ 52-572. Parental liability for torts of minors.](#)

**LEGISLATIVE:**

- *George Coppolo, Parental Liability And Victims Rights*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH REPORT no. 98-R-0312. <http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0312.doc>

**FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[FORM 804.9. Action against minor and parents for injury to another minor](#)
- 19 AM JUR PL & PR FORMS *Parent & Child* (1997 Rev.).  
Liability of parent for acts of child §§ 152-163
  - § 155. Complaint, petitions, or declarations—Injury to property by minor
  - § 156. Complaint, petitions, or declarations—Injury inflicted by minor child using hammer and butcher knife—Negligent failure to control child
  - § 157. Complaint, petitions, or declarations—Injury, inflicted by minor child—Negligent failure to control child
  - § 158. Complaint, petitions, or declarations—Injury inflicted by minor child with gun—Negligence of parent in leaving gun accessible to child
  - § 159. Complaint, petitions, or declarations—Against parent and minor child—Injury inflicted by minor child with gun—Negligent entrustment of firearm
  - § 160. Complaint, petitions, or declarations—Injury inflicted by minor child using air rifle—Negligence of parents in entrusting air rifle to minor child
  - § 161. Complaint, petitions, or declarations—For damages to automobile taken by defendant's minor child—Statutory liability
  - § 162. Complaint, petitions, or declarations—Allegation—Parents' failure to exercise proper control over child

**JURY INSTRUCTIONS:**

- DOUGLASS B. WRIGHT AND WILLIAM L. ANKERMAN, CONNECTICUT JURY INSTRUCTIONS (CIVIL) (4<sup>th</sup> ed. 1993).  
§ 517. Parent's liability for misconduct of child

**CASES:**

- *Robyn v. Palmer-Smith*, No. CV99-0174453S, 2001 WL 237112 (Feb. 20, 2001). "In this case, the plaintiff alleges that the defendant failed to exercise reasonable care in controlling her son and preventing him from harming others and that she failed to control his abuse of illegal substances although she knew or should have known that her son was involved with them. Consequently, the court finds that the language of count two sufficiently alleges that the defendant knew or should have known of her child's dangerous tendencies and therefore, the plaintiff has sufficiently alleged an exception to the general rule that a parent is not liable for the torts of its minor child."
- *Kaminski v. Fairfield*, 216 Conn. 29, 30, 578 A.2d 1048 (1990). "The sole issue in this appeal is whether a request for mental health assistance to control the behavior of an adult son supports the imposition of tort liability on his parents for injuries inflicted by the son on a police officer accompanying the requested mental health workers to the parents' home."
- *Gearity v. Salvo*, 40 Conn. Supp. 185,187, 485 A.2d 940 (1984). "This court concludes that 'control of the minor' is a determining factor in the imposition

of liability under § 52-572 . . . ."

- Lamb v. Peck, 183 Conn. 470, 473, 441 A.2d 14 (1981). "The applicable statutory requirement for parental liability is that the minor wilfully or maliciously causes injury to a person. General Statutes 52-572. We conclude that this requirement is met where a minor intentionally aids another who intentionally injures a third person. Because there was evidence indicating that all four minor defendants acted intentionally and in concert, the trial court correctly imposed liability on the defendant parents under 52-572."
- Watson v. Gradzik, 34 Conn. Supp. 7,10-11, 373 A.2d 191 (1977). "The legislature passed this statute [§ 52-572] for two apparent reasons. One reason is to deter juvenile delinquency by placing upon the parent the obligation to control his minor child so as to prevent him from intentionally harming others . . . . The other is to compensate innocent victims for the damage caused by minor tortfeasors. The court is of the opinion that the regulation has a rational relationship to the preservation and promotion of the public welfare and that the defendants have failed to prove otherwise. The court holds the statute to be constitutional."
- Groton v. Medbery, 6 Conn. Cir. 671, 673, 301 A.2d 270 (1972). "In order for the plaintiff to recover, the court, after such consideration, must find from the facts provable under the substituted complaint that the injury to the police officer was caused wilfully and maliciously by the minor defendant. This statutory limitation to the veracious liability of the parent is directly related to the purpose of the law, which is to place upon the parent the obligation to control his minor child as to prevent the child from intentionally harming others."
- LaBonte v. Federal Mutual Ins. Co., 159 Conn. 252, 256, 268 A.2d 663 (1970). "At common law parents were not liable for the torts of their children unless they themselves were independently negligent, as where they had entrusted a dangerous instrumentality to their children or had failed to restrain their children who they knew possessed dangerous tendencies . . . . The statute [§ 52-572] in question thus creates liability where none existed at common law, and the liability is absolute, in the sense that no negligence need be shown to exist on the part of the parents. If the child is liable, as is admitted in the present case, the parents are jointly and severally liable with him."

**WEST KEY  
NUMBER:**

- *Parent and Child*  
#13.5. Torts  
(1). In general  
(2). Liability for torts or misconduct of child in general  
(4). Negligent supervision or control of child by parent  
(5). Proceedings

**DIGESTS:**

- ALR DIGEST: *Parent and Child*  
§ 11. Liability for child's torts, negligence, or crimes

**ENCYCLOPEDIAS:**

- 59 AM JUR 2d *Parent & Child* (2002).  
Liability of parent for conduct of children; Offenses of child against parents §§ 96-105  
§ 96. Generally  
§ 97. Where instrumentality is entrusted or accessible to child  
§ 98. —Gun  
§ 99. Failure to control child  
§ 100. Tort of insane or mentally deficient child  
§ 101. Liability of parent as employer or principal

- § 102. When parent directs, consents to, or ratifies act of child
- § 103. Statutory liability
- § 104. Criminal responsibility
- 67A C.J.S. Parent & Child (2002).
  - Tort liability and rights of action, §§ 309-344
  - Liability of parent for torts of child
    - § 309. Generally
    - § 310. Acts of child as agent of parent
    - § 311. Negligence of parent as cause of injury
    - § 312. Negligence of parent as cause of injury—Negligent supervision, control, or entrustment
    - § 313. Actions
    - § 314. Actions—Evidence
    - § 315. Actions—Questions of fact
  - Special parental relationships
    - §§ 345-350. Persons in loco parentis
    - §§ 351-356. Stepparents
    - §§ 357-358. Grandparents

#### ALR Annotations

- Kimberly C. Simmons, *Liability Of Adult Assailant's Family To Third Party For Physical Assault*, 25 ALR5th 1 (1994).
- Michael J. Yaworsky, *Jurisdiction Or Power Of Juvenile Court To Order Parent Of Juvenile To Make Restitution For Juvenile's Offense*, 66 ALR4th 985 (1988).
- Donald Paul Duffala, *Modern Trends As To Tort Liability Of Child Of Tender Years*, 27 ALR4th 15 (1984).
- Wanda Ellen Wakefield, *Liability Of Donor Of Motor Vehicle For Injuries Resulting From Owner's Operation*, 22 ALR4th 738(1983).
- Eunice A. Eichelberger, *Criminal Responsibility Of Parent For Act Of Child*, 12 ALR4th 673 (1982).
- Bruce I. McDaniel, *Liability Of Owner Of Powerboat For Injury Or Death Allegedly Caused By One Permitted To Operate Boat By Owner*, 71 ALR3d 1018 (1976).
- George Priest, *Liability of Parent For Injury Caused By Child Riding Bicycle*, 70 ALR3d 611 (1976).
- Wade R. Habeeb, *Parents' Liability For Injury Or Damage Intentionally Inflicted By Minor Child*, 54 ALR3d 974 (1973).
- *Validity and Construction of Statute Making Parents Liable For Torts Committed By Their Minor Children*, 8 ALR3d 612 (1966).

#### Poof of Facts

- *Parental Failure To Control Child*, 45 POF2d 549 (1986).
- *Negligence of bicyclist*, 12 POF3d 247 (1991).
- *Motor Vehicle Accidents—Contributory negligence by bicyclist*, 11 POF3d 503 (1991).

#### **TEXTS & TREATISES:**

- DOUGLASS B. WRIGHT ET AL., CONNECTICUT LAW OF TORTS (3rd ed. 1991).
  - § 77. Parent and child
- JOEL M. KAYE ET AL., 3A CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED (1996).
  - Authors' comments following Form 804.9, pp. 47-50.
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
  - Chapter 5. Minors

§5-2 Parental liability for torts of minors

- (a). Common law
- (b). Conn. Gen. Stat. §52-572
  - (1). History
  - (2). Custody and control
  - (3). Necessary intent
  - (4). Statute of limitations
  - (5). Insurance
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (1994).
  - Chapter 9. Children and the law of torts
  - Torts committed by children, §§ 9.01 - 9.04
  - § 9.04. Parental responsibility for tortious acts of children
- RESTATEMENT OF THE LAW OF TORTS 2D
  - § 316. Duty of parent to control conduct of child

**LAW REVIEWS:**

- Kathryn Calibey , *Connecticut's Parent-Child Immunity Doctrine*, 65 CONNECTICUT BAR JOURNAL 210 (June 1991).
  - Includes in Appendix, "State Survey of Parent-Child Immunity in Negligence Action," pp. 220-223.
- Emogene C. Wilhelm, Note, *Vicarious Parental Liability In Connecticut: Is It Effective?* 7 BRIDGEPORT LAW REVIEW 99 (1986).
- Richard G. Kent, *Parental Liability For Torts Of Children*, 50 CONNECTICUT BAR JOURNAL 452 (1976).

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**Table 14 Parental liability for torts of minors**

<b>Conn. Gen. Stats. § 52-572 (2003)</b>	
(a)	The parent or parents or guardian, other than a temporary guardian appointed pursuant to section 45a-622, of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.
(b)	This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.
(c)	The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.
(d)	As used in this section, "damage" shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof.

# Section 4.3

## Actions By or Against Minors

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to tort actions brought by or against minors in Connecticut including parent-child immunity.

### **DEFINITIONS:**

- **Next friend:** "Under our practice an action on behalf of a minor is properly brought by the minor by next friend." Tulin v. Tulin, 124 Conn. 518, 522, 200 A. 819 (1938).
- **Parent-Child Immunity:** "bars an unemancipated minor from suing his or her parent for injuries caused by the negligence of that parent." Dubay v. Irish, 207 Conn. 518, 523, 542 A.2d 711 (1988).
- **Exceptions:** "Connecticut law recognizes only four exceptions to the parental immunity doctrine. First, an unemancipated minor can sue the employer of a parent whose negligence in the course of employment injured the child, thereby putting the parent at risk of an indemnity suit. Chase v. New Haven Waste Material Corp., 111 Conn. 377, 380, 150 A. 107 (1930). Second, a minor can sue a parent if the child was emancipated prior to the tortious conduct. See Wood v. Wood, 135 Conn. 280, 283, 63 A.2d 586 (1948). Third, an unemancipated minor can sue a parent for injuries received through the negligent conduct of a business enterprise conducted away from the home. Dzenutis v. Dzenutis, 200 Conn. 290, 300, 512 A.2d 130 (1986). Fourth, an unemancipated minor can sue a parent for injuries resulting from the negligent operation of a motor vehicle, aircraft or waterborne vessel. General Statutes 52-572c." Squeglia v. Squeglia, 34 Conn. App. 866, 869, 644 A.2d 378 (1994), cert.granted in part 231 Conn. 920, aff'd 234 Conn. 259.
- **Purpose:** ". The purpose of the doctrine is to preserve the integrity and unity of the family and to avoid unnecessarily injecting 'the machinery of the state' into the day-to-day exercise of parental discretion." Squeglia v. Squeglia, 234 Conn. 259, 265, 661 A.2d 1007 (1995).

### **STATUTES:**

- CONN. GEN. STATS. (2003).
  - Chapter 801b. Probate court procedures
    - § 45a-132. Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons
  - Chapter 900. Court practice and procedure
    - § 52-204. Recovery of expenditures by husband or parent
  - Chapter 925. Statutory rights of action and defenses
    - § 52-572c. Parent-child immunity abrogated in certain negligence actions

## **FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[FORM 804.9. Action against minor and parents for injury to another minor](#)
- 14 AM JUR PL & PR FORMS *Infants* (1996 Rev.).  
Torts §§ 191-222
  - § 194. Complaint, petition, or declaration—Against operator of summer camp—Negligence in supervision of care of infant
  - § 196. Complaint, petition, or declaration—Wrongful death of minor from exploding dynamite—Attractive nuisance—Dynamite left on land by former owner
  - § 197. Complaint, petition, or declaration—Wrongful death of minor by drowning
  - § 198. Complaint, petition, or declaration—Injuries to child—Attractive nuisance—Injuries incurred while playing on push car
  - § 199. Complaint, petition, or declaration—Injuries to child—Attractive nuisance—Building supplies near railroad tracks
  - § 200. Complaint, petition, or declaration—Allegation—Against manufacturer of drug—Birth defects resulting from drug
  - § 201. Complaint, petition, or declaration—Against infant—Fraudulent misrepresentation of age inducing contract
  - § 202. Complaint, petition, or declaration—Against infant and parent—Negligent entrustment of weapon
  - § 203. Complaint, petition, or declaration—Against infant and parent—Negligent entrustment of weapon—Alternate form
  - § 204. Complaint, petition, or declaration—Against department store—False imprisonment of minor

## **JURY INSTRUCTIONS:**

- DOUGLASS B. WRIGHT AND WILLIAM L. ANKERMAN, CONNECTICUT JURY INSTRUCTIONS (CIVIL) (4<sup>th</sup> ed. 1993).
  - § 130. Care required of child
  - § 131. Contributory negligence of a child
  - § 132. Violation of statute by child
  - § 134a. Concurrent negligence of parent
  - § 179. Contributory negligence—Child
- 14 AM JUR PL & PR FORMS *Infants* (1996).
  - § 207. Instruction to jury—Standard of care required of infant
  - § 208. Instruction to jury—Standard of care required of infant—Alternate form
  - § 209. Instruction to jury—Standard of care required of infant—Personal injury case
  - § 210. Instruction to jury—Standard of care required of infant—Conclusive presumption against contributory negligence of child of very tender years
  - § 213. Instruction to jury—Misrepresentation of age constituting fraud

## **CASES:**

- [Crotta v. Home Depot, Inc.](#), 249 Conn. 634, 644-645, 732 A.2d 767 (1999).  
"We conclude, therefore, that the doctrine of parental immunity operates to preclude the parent of a minor plaintiff from being joined as a third party defendant for purposes of apportionment of liability, contribution or indemnification based on the parent's allegedly negligent supervision of the minor plaintiff."
- [Purzycki v. Town of Fairfield](#), 244 Conn. 101, 115, 708 A.2d 937 (1998).  
"They state that a teacher in a public school stands in loco parentis toward a pupil, and that the parental immunity doctrine bars an unemancipated minor

from bringing an action against his or her parents for injuries sustained by the negligence of the parents. Completing the syllogism, they argue that the tort liability of school officials for negligence must also fall within parental immunity. We are not persuaded."

- Ascutto v. Farriacielli, 244 Conn. 692, 701, 711 A.2d 708 (1998). "The primary focus of the parental immunity doctrine in Connecticut is the protection of the relationship between the parent and the child. The protection of that relationship enables the parent to raise the child effectively without undue interference from the state."
- LaRosa v. Lupoli, 44 Conn. App. 225, 228, 688 A.2d 356 (1997), cert. den. 240 Conn. 918. "Thus, there is no requirement for service on a parent or guardian in Connecticut when the defendant is a minor."
- Squeglia v. Squeglia, 34 Conn. App. 866, 869, 644 A.2d 378 (1994), cert. granted in part 231 Conn. 920, aff'd 234 Conn. 259.
- Dubay v. Irish, 207 Conn. 518, 530, 542 A.2d 711 (1988). "We conclude that the plaintiff has failed in his burden to prove that a child had either a statutory or a common law right of action in tort against a parent prior to 1818 when the Connecticut constitution was adopted."
- Overlock v. Ruedemann, 147 Conn. 649, 654, 165 A.2d 335 (1960). "We see no logic or reason in affording an immunity when the plaintiff and the defendant are unemancipated minor children in the same family."

**WEST KEY  
NUMBER:**

- *Infants*  
Torts # 59-64  
# 59. Liability in general  
# 60. Wilful injuries  
# 61. Negligence  
# 62. False representation  
# 63. Acts continued after majority  
# 64. Damages

**DIGESTS:**

- ALR DIGEST: *Infants*  
Capacities, disabilities, and liabilities, §§ 34-42  
Torts, §§ 37-42

**ENCYCLOPEDIAS:**

- 42 AM JUR 2d *Infants* (2000).  
Actions §§ 149-235  
Representation of infant, §§ 158-201  
§ 158. Generally; distinction between next friend and guardian ad litem  
§ 168. Qualifications of representative; generally  
§ 169. Disqualification of representative
- 59 AM JUR 2d *Parent & Child* (2002).  
Actions involving parent and child §§ 106-121  
§§ 106-107. In general  
§§ 110-121. Child against parent
- 43 C.J.S. *Infants* (1978).  
Torts, §§ 189-195  
§ 189. Liability of infant in general  
§ 190. Malicious or intentional injuries  
§ 191. Torts connected with contracts  
§ 192. Fraud and false representations  
§ 193. Negligence  
§ 194. \_\_\_\_\_. Operation of motor vehicle

§ 195. Damages

- 67A C.J.S. Parent & Child (2002).  
Tort liability and actions between parent and child  
§ 316. Parent against child  
§ 317. Child against parent  
§ 318. Child against parent—Limitations to rule  
§ 319. Child against parent—Exceptions to rule  
§ 320. Child against parent—Abolishment of rule

ALR Annotations

- Donald Paul Duffala, Annotation, *Modern Trends As To Contributory Negligence Of Children*, 32 ALR4th 56 (1984).
- Donald Paul Duffala, Annotation, *Modern Trends As To Tort Liability Of Child Of Tender Years*, 27 ALR4th 15 (1984).
- Romualdo P. Eclavea, Annotation, *Liability Of Parent For Injury To Unemancipated Child Caused By Parent's Negligence—Modern Cases*, 6 ALR4th 1066 (1981).

Poof of Facts

- *Negligence of bicyclist*, 12 POF3d 247 (1991).
- *Motor Vehicle Accidents—Contributory negligence by bicyclist*, 11 POF3d 503 (1991).

**TEXTS &  
TREATISES:**

- DOUGLASS B. WRIGHT ET AL., CONNECTICUT LAW OF TORTS (3rd ed. 1991).  
§ 75. Actions by or against a child
- JOEL M. KAYE ET AL., 3A CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED (1996).  
Authors' comments following Form 804.9, pp. 47-50.
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).  
Chapter 5. Minors  
§ 5.3. Actions by or against a minor  
(a). Parent-child immunity  
(b). Suits by or on behalf of minors  
(c). Limitations of actions
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (1994).  
Chapter 9. Children and the law of torts  
Parental torts and the family immunity doctrine, §§ 9.05 - 9.10  
§ 9.06. Parental torts against children and the family immunity doctrine  
§ 9.07. —Judicial erosion of the Immunity Doctrine  
§ 9.08. —Exceptions to the Parental Immunity Doctrine  
§ 9.10. Parental discretion and the family relationship

**LAW REVIEWS:**

- Melissa B. Gosart-Convertito, Casenote, *Ascuitto V. Farricielli: Connecticut's Failure To Reform Familial Tort Liability*, 19 QUINNIPIAC LAW REVIEW 581 (2000).
- Kathryn Calibey, *Connecticut's Parent-Child Immunity Doctrine*, 65 CONN. B.J. 210 (1991).

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Table 15 Doctrine of Interspousal Immunity in Connecticut

<b>Doctrine of Interspousal Immunity in Connecticut</b>	
<b>Statutes &amp; Cases</b>	
<p>CONN. GEN. STATS. § 52-572d (2003).</p>	<p>"In all actions brought by one resident spouse against the other resident spouse for negligence in the operation of a motor vehicle resulting in personal injury, wrongful death or injury to property, it shall not be a defense or a bar to the cause of action that such an action by one spouse against another would not lie in the state where the injury or death occurred. The rights of such spouses, including the standard of care to be applied in such action, shall be determined as if the injury or death had occurred in this state."</p>
<p><u>Brown v. Brown</u>, 88 Conn. 42, 48, 89 A. 889 (1914)</p>	<p>"When a wife is allowed to possess and deal with her own property and carry on business in her own name like a <i>feme sole</i>, she ought to have the same right to contract and enforce her contracts, and the same remedies for injuries to her person and property, which others have, and to be liable upon her contracts and for her torts the same as others are. This is the position in which she now stands."</p>
	<p>"In the fact that the wife has a cause of action against her husband for wrongful injuries to her person or property committed by him, we see nothing which is injurious to the public, or against the public good, or against good morals." Ibid.</p>
	<p>"The danger that the domestic tranquility may be disturbed if husband and wife have rights of action against each other for torts, and that the courts will be filled with actions brought by them against each other for assault, slander and libel, as suggested in some of the cases cited in behalf of the defendant, we think is not serious." Ibid.</p>
	<p>"We find nothing to warrant the claim that public policy is opposed to the existence of a cause of action for a personal tort in favor of husband or wife against the other spouse where the wife's identity is not merged in that of her husband." Ibid., p. 49</p>
<p><u>Bushnell v. Bushnell</u>, 103 Conn. 583, 586-587, 131 A. 432 (1925)</p>	<p>While we were there dealing with an assault, that is, a wilful tort, the language used was designed to apply broadly and to give the wife the same right to sue her husband for any tort committed by him that any other individual would have, except as that right is modified by statutory provision or is necessarily affected by the marriage relationship."</p>
<p><b>Continued</b></p>	

## Doctrine of Interspousal Immunity in Connecticut (cont'd)

### Secondary Materials

Text & Treatises	<ul style="list-style-type: none"> <li>• DOUGLASS B. WRIGHT ET AL. CONNECTICUT LAW OF TORTS (3<sup>rd</sup> ed. 1991). § 78. Liability of one spouse to another.</li> <li>• RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996). § 23-3(b). Other familial relationships.</li> <li>• DANIEL C. POPE, CONNECTICUT ACTIONS AND REMEDIES: TORT LAW (1996). § 31:04. Spouses.</li> </ul>
ALR Annotations	Wayne F. Foster, Annotation, <i>Modern Status Of Interspousal Tort Immunity In Personal Injury And Wrongful Death Actions</i> , 92 ALR3d 901 (1979).

**Table 16 Doctrine of Parental Immunity in Connecticut**

<b>Doctrine of Parental Immunity in Connecticut</b>	
<b>Statutes and Cases</b>	
<p>CONN. GEN. STAT. § 52-572c (2003).</p>	<p><b>Parent-child immunity abrogated in certain negligence actions.</b> In all actions for negligence in the operation of a motor vehicle, and in all actions accruing on or after October 1, 1979, for negligence in the operation of an aircraft or vessel, as defined in section 15-127, resulting in personal injury, wrongful death or injury to property, the immunity between parent and child in such negligence action brought by a parent against his child or by or on behalf of a child against his parent is abrogated.</p>
<p><u>Crotta v. Home Depot, Inc.</u>, 249 Conn. 634, 644-645, 732 A.2d 767 (1999)</p>	<p>“We conclude, therefore, that the doctrine of parental immunity operates to preclude the parent of a minor plaintiff from being joined as a third party defendant for purposes of apportionment of liability, contribution or indemnification based on the parent's allegedly negligent supervision of the minor plaintiff.”</p>
<p><u>Ascutto v. Farricielli</u>, 244 Conn. 692, 693, 711 A.2d 708 (1998)</p>	<p>"The issue in this appeal is whether the doctrine of parental immunity, which generally bars unemancipated minors from suing their parents for personal injuries, prevents a child of divorced parents from bringing a negligence action against a noncustodial parent for injuries the child sustained while in that parent's home during a scheduled visitation period. Specifically, we must decide whether the trial court properly granted the defendant father's motion for summary judgment based on the doctrine of parental immunity. We conclude that the doctrine of parental immunity applies and, accordingly, we affirm the judgment."</p>
<p><u>Squeglia v. Squeglia</u>, 34 Conn. App. 866</p>	<p>“The dispositive issue in this appeal is whether the doctrine of parental immunity bars an action by an unemancipated minor against his parent alleging strict liability pursuant to General Statutes § 22-357. We conclude that it does.”</p>
<p>Continued on next page</p>	

## Doctrine of Parental Immunity in Connecticut (cont'd)

<p><u>Dubay v. Irish</u>, 207 Conn. 518, 527, 542 A.2d 711 (1988).</p>	<p>"Accordingly, we decline to abrogate the doctrine of parental immunity in cases, such as this, involving allegations of the negligent exercise of parental discretion with regard to the care, supervision and instruction of a child based solely upon the existence of liability insurance."</p> <p>"Consequently, contrary to his unsupported claim, we find that the trial court did not err in holding that the plaintiff failed to demonstrate that the doctrine of parental immunity as applied in this case violated article first, 10, of the Connecticut constitution." Ibid., p. 530</p> <p>"There is no dispute that, at the time of her injuries, Elizabeth was the seventeen and one-half year old unemancipated child of the defendant. Her subsequent emancipation prior to the filing of this action had no effect on the applicability of the parental immunity doctrine. The trial court did not err in so holding." Ibid., p. 523-524.</p>
<p><u>Dzenutis v. Dzenutis</u>, 200 Conn. 290, 291, 512 A.2d 130 (1986).</p>	<p>"The principal issue in this appeal is whether this court should continue to adhere to the doctrine of parental immunity from liability for negligence to an unemancipated minor child who was injured in the course of a business activity conducted by the parent any from the home. We conclude that in the limited context of the circumstances presented by this appeal the doctrine no longer serves the purposes for which it was designed and that we must, accordingly, modify the breadth of our decisions in previous cases that have unconditionally endorsed parental immunity as a defense to a negligence suit by a child."</p>
<p>West Key Numbers</p>	<p>PARENT &amp; CHILD # 11. Actions between parent and child</p>
<p>Encyclopedias</p>	<p>Romualdo P. Eclavea, Annotation, <i>Liability Of Parent For Injury To Unemancipated Child Caused By Parent's Negligence—Modern Cases</i>, 6 ALR4th 1066 (1981).</p>
<p>Text &amp; Treatises</p>	<ul style="list-style-type: none"> <li>• DOUGLASS B. WRIGHT ET AL. CONNECTICUT LAW OF TORTS (3<sup>rd</sup> ed. 1991). § 77. Parent and child.</li> <li>• RICHARD L. NEWMAN AND JEFFREY S. WILDSTEN, TORT REMEDIES IN CONNECTICUT (1996). § 23-3(a). Parental immunity.</li> </ul>
<p>Law Reviews</p>	<ul style="list-style-type: none"> <li>• Melissa B. Gosart-Convertito, Casenote, <i>Ascuitto v. Farricielle: Connecticut's Failure To Reform Familial Tort Liability</i>, 19 Quinnipiac L. Rev. 581 (2000).</li> <li>• Kathryn Calibey, <i>Connecticut's Parent-Child Immunity Doctrine</i>, 65 CONN. B.J. 210 (1991).</li> </ul>

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Chase v. New Haven Waste Material Corp., 111 Conn. 377, 380, 150 A. 107 (1930), § 4.3

Colligan v. Reilly, 129 Conn. 26, 26 A.2d 231 (1942), § 4.1

Cromwell v. Danforth, 222 CONN. 150, 151, 609 A.2d 654 (1992), § 1.4.

Crotta v. Home Depot, Inc., 249 Conn. 634, 644-645, 732 A.2d 767 (1999), § 4.3

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Dore v. Devine, No. CV00-0176933S (Conn. Super. Ct., Jud. District of Stamford-Norwalk at Stamford, Oct. 6, 2000), 2000 WL 1682709, 2000 Conn. Super. LEXIS 2764, § 1.4.

Dubay v. Irish, 207 Conn. 518, 523, 542 A.2d 711 (1988), § 4.3

Dufault v. Mastrocola, No. CV 94 0543343 (Conn. Super. Ct., Jud. District of Hartford-New Britain at Hartford, Mar. 1, 1996), 1996 WL 166471, § 1.2

Dzenutis v. Dzenutis, 200 Conn. 290, 300, 512 A.2d 130 (1986), § 4.3

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Kaminski v. Fairfield, 216 Conn. 29, 30, 578 A.2d 1048 (1990), § 4.2

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Purzycki v. Town of Fairfield, 244 Conn. 101,115, 708 A.2d 937 (1998), § 4.3

Rabagleno v. King, No. 0325871 (Conn. Super. Ct., Jud. District, Hartford-New Britain at Hartford, Jan. 15, 1991), 1991 Ct. Sup. 686, 687, 1991 WL 27914, 1991 Conn. Super. LEXIS 85, § 1.4.

Rappa v. Connecticut Co., 96 Conn. 285, 114 A.81 ( 1921), § 4.1

Robyn v. Palmer-Smith, No. CV99-0174453S, 2001 WL 237112 (Feb. 20, 2001), § 2

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Tulin v. Tulin, 124 Conn. 518, 522, 200 A. 819 (1938), § 4.3  
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Wilful and malicious injury, definition, § 4.2